

United States
Circuit Court of Appeals

For the Ninth Circuit.

CHARLES ROMEO, AUGUST BIANCHI, JOHN
GATT, FRANK GATT, and ROMEO
TRONCA,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Western District of Washington,
Northern Division.

FILED

MAY 6 - 1924

F. D. MONCKTON,
CLERK.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Arraignment and Plea	13
Assignments of Error	25
Bill of Exceptions	31
Certificate of Clerk U. S. District Court to Transcript of Record	109
Citation on Writ of Error	112
Hearing on Motion for New Trial—Sentence Passed	18
Indictment	2
Instructions of Court to the Jury	84
Motion for New Trial	18
Names and Addresses of Counsel	1
Order Allowing Writ of Error and Fixing Amount of Bond	30
Order Extending Time to and Including April 10, 1926, to File Bill of Exceptions	31
Order Extending Time to and Including May 1, 1926, to File Record	106
Order Extending Time to and Including Au- gust 1, 1926, to File Record	106
Order Extending Time to and Including De- cember 10, 1926, to File Record	107

	Page
Index.	
Order Extending Time to and Including April 1, 1927, to File Record	107
Order Settling Bill of Exceptions	104
Petition for Writ of Error	23
Praecipe for Transcript of Record	108
Re-trial	13
Sentence (August Bianchi)	22
Sentence (Frank Gatt)	20
Sentence (John Gatt)	21
Sentence (Charles Romeo)	19
Sentence (Romeo Tronca)	22
TESTIMONY ON BEHALF OF THE GOV- ERNMENT:	
BACKSTROM, H. G.	46
CARRUTHERS, ERVEN H.	43
Cross-examination	45
CORWIN, EARL	47
HANNUM, JOHN W.	38
JACKSON, R. C.	46
LAMBERT, R. A.	46
McCRORY	39
Cross-examination	43
PEPE, ARINELLO	34
RAGSDALE, T. P.	77
SHAFER, ADAM A.	32
WHITNEY, W. M.	55
Cross-examination	76
TESTIMONY ON BEHALF OF DEFEND- ANTS:	
GATT, MRS. FRANK	81
GATT, FRANK	80
Cross-examination	81

TESTIMONY ON BEHALF OF DEFEND-	
ANTS—Continued:	
GRISSON, W. K.	78
HORTON, HOWARD	79
JAHN, C. W.	79
ROMEO, CHARLES	80
TRONCA, ROMEO	77
Cross-examination	78
WHITNEY, W. M. (Recalled—Cross-ex-	
amination)	79
Trial Resumed (December 30, 1925)	15
Trial Resumed—Verdict Returned (Decem-	
ber 31, 1925)	16
Verdict	17
Writ of Error	110

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*Page-number appearing at the foot of page of original certified
Transcript of Record.

United States District Court, Western District of
Washington, Northern Division.

November, 1924, Term.

No. 9435.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK GATT, JOHN GATT, CHARLES RO-
MEO, JAMES ROSSI, ROMEO TRONCA,
AUGUST BIANCHI, LEO MORELLI,
ARINELLO PEPE, ANTONIO GARACE,
and LOUIE CICCI,

Defendants.

INDICTMENT.

Vio. Sec. 37 Penal Code, Conspiracy to Violate Act
of Oct. 28, 1919.

United States of America,
Western District of Washington,
Northern Division,—ss.

The grand jurors of the United States of America
being duly selected, impaneled, sworn, and charged
to inquire within and for the Northern Division of
the Western District of Washington, upon their
oaths present: [2]

COUNT I.

That FRANK GATT, JOHN GATT, CHARLES
ROMEO, JAMES ROSSI, ROMEO TRONCA,

AUGUST BIANCHI, LEO MORELLI, ARIN-
ELLO PEPE, ANTONIO GARACE, and LOUIS
CICCI, and each of them, on or about *the in* the
year of our Lord one thousand nine hundred and
twenty- within the Northern Division of the West-
ern District of Washington, and within the juris-
diction of this court, then and there being, did
then and there knowingly, willfully, unlawfully,
and feloniously combine, conspire, confederate, and
agree together, and one with the other, and together
with divers other persons to the grand jurors un-
known, to commit certain offenses against the
United States, that is to say, to violate the provi-
sions of the Act of Congress passed October 28,
1919, and known as the National Prohibition Act, it
being then and there the plan, purpose, and object
of said conspiracy and the object of said persons so
conspiring together as aforesaid, and hereinafter
referred to as the conspirators, to knowingly, will-
fully, and unlawfully possess and sell, in said divi-
sion and district, certain intoxicating liquors, to
wit, whiskey, distilled spirits, and divers other
liquors containing more than one-half of one per
centum of alcohol by volume, and fit for use for
beverage purposes, a more particular description
of the amount and kind whereof being to the grand
jurors unknown, such possession being intended by
them, the said conspirators, for the purpose of
violating the National Prohibition Act by selling,
bartering, exchanging, giving away, furnishing, and
otherwise disposing of said intoxicating liquors in
[3] violation of the National Prohibition Act,

such possession and sale of said intoxicating liquors by them, the said conspirators, as aforesaid, being unlawful and prohibited by the said Act of Congress. That it was then and there further the plan, purpose, and object of said conspiracy, and the object of said conspirators so conspiring together as aforesaid, to knowingly, willfully, and unlawfully conduct and maintain a common nuisance at certain premises within the city of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, to wit, 404 Fifth Avenue South, Seattle, Washington, by keeping, selling, and bartering therein certain intoxicating liquors, to wit, whiskey, distilled spirits, and divers other liquors containing more than one-half of one per centum of alcohol by volume, and fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the grand jurors unknown, said maintaining of such nuisance by the said conspirators as aforesaid being unlawful and prohibited by the National Prohibition Act.

That said conspiracy was and is a continuing conspiracy, continuing from, to wit, the first day of March, 1923, to the time of the presentment of this indictment. [4]

OVERT ACTS.

1. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirator, LEO MORELLI,

on the 26th day of March, 1923, at said 404 Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there knowingly, willfully, and unlawfully possess and sell certain intoxicating liquor, to wit, two (2) ounces of distilled spirits, all of said liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, such possession by the said conspirator as aforesaid being then and there for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing, and otherwise disposing of said intoxicating liquor, and such possession and sale of said intoxicating liquor being then and there unlawful and prohibited by the National Prohibition Act. [5]

2. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators JAMES ROSSI, ROMEO TRONCA, LOUIE CICCI and JOHN GATT, and each of them, on the 25th day of November, 1923, at said 404 Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there knowingly, willfully, and unlawfully possess and sell certain intoxicating liquor, to wit, eleven (11) ounces of whiskey, all of said liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for

beverage purposes, such possession by the said conspirator as aforesaid being then and there for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing, and otherwise disposing of said intoxicating liquor, and such possession and sale of said intoxicating liquor being then and there unlawful and prohibited by the National Prohibition Act. [6]

3. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators JAMES ROSSI and LOUIE CICCI and each of them, on the 11th day of December, 1923, at said 404 Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there knowingly, willfully, and unlawfully possess and sell certain intoxicating liquor, to wit, four (4) ounces of whiskey, all of said liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, such possession by the said conspirator as aforesaid being then and there for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing, and otherwise disposing of said intoxicating liquor, and such possession and sale of said intoxicating liquor being then and there unlawful and prohibited by the National Prohibition Act. [7]

4. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirator LOUIE CICCI, on the 24th day of December, 1923, at said 404 Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there knowingly, willfully, and unlawfully possess and sell certain intoxicating liquor, to wit, thirty-two (32) ounces of distilled spirits, all of said liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, such possession by the said conspirator as aforesaid being then and there for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing, and otherwise disposing of said intoxicating liquor, and such possession and sale of said intoxicating liquor being then and there unlawful and prohibited by the National Prohibition Act. [8]

5. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators JAMES ROSSI and LOUIE CICCI, and each of them, on the 8th day of January, 1924, at said 404 Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there knowingly, willfully, and unlawfully possess and

sell certain intoxicating liquor, to wit, twelve (12) ounces of distilled spirits, all of said liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, such possession by the said conspirator as aforesaid being then and there for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing, and otherwise disposing of said intoxicating liquor, and such possession and sale of said intoxicating liquor being then and there unlawful and prohibited by the National Prohibition Act. [9]

6. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators JAMES ROSSI and LOUIE CICCI, and each of them, on the 24th day of January, 1924, at said 404 Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there knowingly, willfully, and unlawfully possess and sell certain intoxicating liquor, to wit, four (4) ounces of distilled spirits, all of said liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, such possession by the said conspirator as aforesaid being then and there for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing, and otherwise disposing

of said intoxicating liquor, and such possession and sale of said intoxicating liquor being then and there unlawful and prohibited by the National Prohibition Act. [10]

7. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators AUGUST BIANCHI, LOUIE CICCI, and CHARLES ROMEO, and each of them, on the 29th day of May, 1924, at said 404 Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there knowingly, willfully, and unlawfully possess and sell certain intoxicating liquor, to wit, twelve (12) ounces of distilled spirits, all of said liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, such possession by the said conspirator as aforesaid being then and there for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing, and otherwise disposing of said intoxicating liquor, and such possession and sale of said intoxicating liquor being then and there unlawful and prohibited by the National Prohibition Act. [11]

8. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators LOUIE CICCI

and ROMEO TRONCA, and each of them, on the 22d day of September, 1924, at said 404 Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there knowingly, willfully, and unlawfully possess and sell certain intoxicating liquor, to wit, four (4) ounces of distilled spirits, all of said liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, such possession by the said conspirator as aforesaid being then and there for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing, and otherwise disposing of said intoxicating liquor; and such possession and sale of said intoxicating liquor being then and there unlawful and prohibited by the National Prohibition Act. [12]

9. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators ARINELLO PEPE, FRANK GATT, and CHARLES ROMEO, and each of them, on the 28th day of February, 1925, at said 404 Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there knowingly, willfully, and unlawfully possess and sell certain intoxicating liquor, to wit, sixteen (16) ounces of distilled spirits, all of said liquor then and there containing more than one-half of one per centum

of alcohol by volume and then and there fit for use for beverage purposes, such possession by the said conspirator as aforesaid being then and there for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing, and otherwise disposing of said intoxicating liquor, and such possession and sale of said intoxicating liquor being then and there unlawful and prohibited by the National Prohibition Act. [13]

10. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators ARINELLO PEPE, FRANK GATT, and CHARLES ROMEO, and each of them, on the 28th day of February, 1925, at Room 17, 404½ Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there knowingly, willfully, and unlawfully possess certain intoxicating liquor, to wit, twenty-five (25) gallons of distilled spirits, and seventy-two (72) one-fifth gallons of whiskey, all of said liquor then and there containing more than one-half of one per centum of alcohol by volume, and then and there fit for use for beverage purposes, such possession by the said conspirator as aforesaid being then and there for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing, and otherwise disposing of said intoxicating liquor, and such possession of said intoxicating liquor being then and

there unlawful and prohibited by the National Prohibition Act. [14]

11. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators, FRANK GATT, JOHN GATT, CHARLES ROMEO, JAMES ROSSI, ROMEO TRONCA, AUGUST BIANCHI, LEO MORELLI, ARINELLO PEPE, ANTONIO GARACE, and LOUIE CICCÌ, and each of them, from the 1st day of March, 1923, to the 28th day of February, 1925, at 404 Fifth Avenue South, Seattle, Washington, in said division and district, then and there being, did then and there and therein knowingly, willfully, and unlawfully conduct and maintain a common nuisance by then and there manufacturing, keeping, selling, and bartering intoxicating liquors, to wit, whiskey, distilled spirits and other intoxicating liquors containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, said maintaining of such nuisance by the said conspirators as aforesaid being then and there unlawful and prohibited by the National Prohibition Act;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE,

United States Attorney.

J. W. HOAR,

Assistant United States Attorney.

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in open court, in the presence of the Grand Jury, and filed in the U. S. District Court March 26, 1925. Ed. M. Lakin, Clerk. By S. E. Leitch, Deputy. [15]

[Title of Court and Cause.]

ARRAIGNMENT AND PLEA.

Now on this 20th day of April, 1925, all defendants come into open court for arraignment accompanied by their attorneys John F. Dore, A. F. Kirby, and H. S. Frye, and say that their true names are Frank Gatt, John Gatt, Charles Romeo, August Bianchi, Leo Morelli, Arinello Pepe and Romeo Tronca. The reading of the indictment is waived and each defendant now enters his plea of not guilty.

Journal No. 13, page 285. [16]

[Title of Court and Cause.]

RE-TRIAL.

Now on this 29th day of December, 1925, this cause is called for re-trial, pursuant to assignment. John F. Dore and F. C. Reagan and H. S. Frye are present as counsel for defendants, and C. T. McKinney and Thomas P. Revelle are present for plaintiff. Both sides are ready. Defendant Au-

gust Bianchi not being present in court is called three times in the corridor of the court and not responding, on motion of the U. S. Attorney, his bail is forfeited *nisi*, and bench-warrant is directed to issue. The regular panel of jurors having been exhausted additional jurors are drawn and the jurors having been admonished, recess is taken until 1:30 P. M. Counsel for August Bianchi advises the Court that he is present in court and ask for an order setting aside bail forfeiture which is denied at this time, but bench-warrant is recalled. At 1:30 the trial is resumed and the jury is impaneled and sworn as follows: W. E. Nims, John F. Schnaufer, U. L. Collins, John Hickey, Geo. N. Price, Frank A. Small, Samuel H. McElpatrick, Harvey N. Rothweiler, W. L. Wheeler, Joe Gardner, W. H. Motley, and Rollin Sanford.

It is ordered by the Court that the jury be kept together during the trial and the Marshal is directed to make arrangements for their accommodation. On motion of defendant, all witnesses on behalf of the Government are sworn, and excluded from the courtroom, except while testifying. The U. S. Attorney being permitted to retain Wm. M. Whitney for purposes of consultation. The witnesses now sworn are: Earl Corwin, A. A. Schaffer, L. O. Shirley, Thos. P. Ragsdale, R. C. Jackson, John W. Hannum, Claude McCrory, E. F. Carrothers, R. C. Jackson, H. G. Backstrom, Richard A. Lambert, Earl Corwin, W. M. Whitney.

Government Exhibits Numbered 26, 38, 39, 40, 41, 42, 43, 47 and 48 are introduced as evidence.

Whereupon court stands adjourned.

Journal No. 14 at page 130. [17]

[Title of Court and Cause.]

TRIAL RESUMED.

Now on this 30th day of December, 1925, trial in this cause is resumed pursuant to adjournment. Jury and all parties are present. Government witnesses are sworn and examined as follows: Wm. M. Whitney, resumes testimony, C. W. Kline and Thomas P. Ragsdale. Pepe, recalled. Government exhibits now admitted in evidence are as follows and as per list in files. Numbers 1 to 25 inclusive, except 16 and 17 which are not offered; 27 to 37 inclusive; 44 to 46, inclusive; 49 to 55, inclusive; No. 56 denied and withdrawn by agent Whitney. The Government rests. H. S. Frye, attorney for Romeo Tronca, makes opening statement to the jury. Counsel for all other defendants waives opening statement. Defendants' witnesses are sworn and examined as follows: Romeo Tronca, H. S. Elliott, Wm. M. Whitney, W. R. Grisson, G. W. Johns, Howard D. Horton, Robert B. Hesketh, Martin J. Clary, E. B. Bem, Charles Romeo, Reilly juror) Frank Gatt, C. J. Francis, Albert Funis, John Gatt, A. Perfetti, Frank Stac-tai, and Mrs. Frank Gatt. Defendants' exhibits admitted in evidence are as follows: "A-4" to

“A-7,” inclusive, as shown by list in files. “A-1” to “A-3,” inclusive, as identified on former trial, not offered. Defendants rest. Witnesses in rebuttal are sworn and examined as follows: A. Pepe, recalled, Earl Corwin, recalled. Wm. M. Whitney, recalled and Earl Corwin, recalled. Both sides rest. Ten minute recess is declared. Cause is argued to the jury and the jury after being instructed by the Court and exceptions to instructions having been taken by the defendants the jury retires at 6 P. M. to deliberate of a verdict. It is agreed that a sealed verdict may be returned into court to-morrow morning if agreed upon by the jury before midnight, otherwise the jury to be put to bed at midnight until six o'clock to-morrow morning when they will resume their deliberations after having had breakfast.

Journal No. 14, at page 130. [18]

[Title of Court and Cause.]

TRIAL RESUMED—VERDICT RETURNED.

Now on this 31st day of December, 1925, all parties except John Gatt being present in court, and his counsel consenting to the receipt of the verdict in his absence, the jury now returns to the Court a sealed verdict finding all the above-named defendants guilty as charged in the indictment. Verdict is received and reads as follows: “We, the jury in the above-entitled cause, find the defendant Charles Romeo is guilty as charged in the in-

dictment herein; and further find the defendant August Bianchi is guilty as charged in the indictment herein; and further find the defendant John Gatt is guilty as charged in the indictment herein; and further find the defendant Frank Gatt is guilty as charged in the indictment herein; and further find the defendant Romeo Troneca is guilty as charged in the indictment herein. Rollin Sanford, Foreman." Verdict is acknowledged and jury is excused from the case.

On motion of the U. S. Attorney, the bail of Frank Gatt is increased to \$3,000.00 and the bail each of the other defendants to \$2,500.00 pending sentence, and defendants given until 5 P. M. to-day to file same. Sentence is continued to January 11, 1926.

Journal No. 14, at page 131. [19]

[Title of Court and Cause.]

VERDICT.

We, the jury in the above-entitled cause, find the defendant Charles Romeo is guilty as charged in the indictment herein; and further find the defendant August Bianchi is guilty as charged in the indictment herein; and further find the defendant John Gatt is guilty as charged in the indictment herein; and further find the defendant Frank Gatt is guilty as charged in the indictment herein; and

further find the defendant Romeo Tronca is guilty as charged in the indictment herein.

ROLLIN SANFORD,

Foreman.

[Endorsed]: Filed Dec. 31, 1925. [20]

[Title of Court and Cause.]

MOTION FOR NEW TRIAL.

Come now the defendants in the above-entitled cause, and each of them, and move for a new trial of said cause, upon the following grounds, to wit:

1. Errors of law occurring at the trial and duly and regularly excepted to by said defendants.
2. That the verdict is contrary to law and the evidence.

JOHN F. DORE,

HERMON S. FRYE,

Attorneys for Defendants.

[Endorsed]: Filed Mar. 21, 1927. [21]

[Title of Court and Cause.]

HEARING ON MOTION FOR NEW TRIAL—
SENTENCE PASSED.

Now on this 11th day of January, 1926, this cause comes on for hearing on motion for a new trial which is argued and said motion is denied with an exception noted. Sentences are passed at this time.

Journal No. 14, at page 149. [22]

[Title of Court and Cause.]

SENTENCE (CHARLES ROMEO).

Comes now on this 11th day of January, 1926, the said defendant Charles Romeo into open court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is considered ordered and adjudged by the Court that the defendant is guilty of violating Section 37, Penal Code, conspiracy to violate the National Prohibition Act, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of 18 months at hard labor and to pay a fine of \$500.00 dollars and costs of prosecution. And the said defendant is hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree No. 4, page 83. [23]

[Title of Court and Cause.]

SENTENCE (FRANK GATT).

Comes now on this 11th day of January, 1926, the said defendant Frank Gatt into open court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. Wherefore by reason of the law and the premises, it is considered ordered and adjudged by the Court that the defendant is guilty of violating Section 37, Penal Code, conspiracy to violate the National Prohibition Act, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States for the term of 2 years at hard labor and to pay a fine of \$2,500.00 dollars and the costs of prosecution. And the said defendant Frank Gatt is hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree No. 4, page 84. [24]

[Title of Court and Cause.]

SENTENCE (JOHN GATT).

Comes now on this 11th day of January, 1926, the said defendant John Gatt into open court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is considered ordered and adjudged by the Court that the defendant is guilty of violating Section 37, Penal Code of the United States, conspiracy to violate the National Prohibition Act, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States for the period of 21 months at hard labor and to pay a fine of \$2,000.00 and costs of prosecution. And the said defendant is hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree No. 4, page 84. [25]

[Title of Court and Cause.]

SENTENCE (AUGUST BIANCHI).

Comes now on this 11th day of January, 1926, the said August Bianchi into open court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is considered ordered and adjudged by the Court that the defendant is guilty of violating Section 37, Penal Code, conspiracy to violate the National Prohibition Act, and that he be punished by being imprisoned in the King County Jail, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of six months and to pay a fine of \$250.00 and the costs of prosecution. And the defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree No. 4, page 84. [26]

[Title of Court and Cause.]

SENTENCE (ROMEO TRONCA).

Comes now on this 11th day of January, 1926, the said defendant Romeo Tronca into open court for

sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is considered ordered and adjudged by the Court that the defendant is guilty of violating Section 37, Penal Code, conspiracy to violate the National Prohibition Act, and that he be punished by being imprisoned in the King County Jail, or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for the period of six months and to pay a fine of \$250.00 dollars and the costs of prosecution. And the defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree No. 4, page 85. [27]

[Title of Court and Cause.]

PETITION FOR WRIT OF ERROR.

To the Above-entitled Court, and to the Honorable
JEREMIAH NETERER, Judge Thereof:

Come now the above-named defendants, Frank Gatt, John Gatt, Charles Romeo, Romeo Tronea and August Bianchi, and by their attorney and counsel respectfully show that on the 31st day of December, 1925, a jury impaneled in the above-

entitled court and cause returned a verdict finding the defendants above named guilty of the charge set forth in the indictment in said cause, which indictment was theretofore filed in the above-entitled court and cause, and thereafter, and within the time limited by law, under the rules and order of this court, said defendants moved for a new trial, which said motion was by the Court overruled and an exception thereto allowed; and thereafter and on the 11th day of January, 1926, said defendants were, by order and judgment of the court above entitled, in said cause, sentenced as follows: Frank Gatt, 2 years McNeil's Island and fine \$2,500.00; John Gatt, 21 months McNeil's Island and fine \$2,000.00; Charles Romeo, 18 months McNeil's Island and fine \$500.00; Romeo Tronca, 6 months King County Jail and fine \$250.00; August Bianchi, 6 months King County Jail and fine \$2,500.00 [28]

And, your petitioners herein, feeling themselves aggrieved by said verdict and the judgment and sentence of the Court herein as aforesaid, and by the orders and rulings of said Court, and proceedings in said cause, now herewith petition this court for an order allowing them to prosecute a writ of error from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States, and in accordance with the procedure of said court made and provided, to the end that the said proceedings as herein recited, and as more fully set forth in the assignments of error presented herewith, may be reviewed and the manifest error appearing

upon the face of the record of said proceedings and upon the trial of said cause may be by said Circuit Court of Appeals corrected, and that for said purpose a writ of error and citation thereon should issue as by law and ruling of the Court provided; and wherefore, premises considered, your petitioners pray that a writ of error issue to the end that said proceedings of the District Court of the United States for the Western District of Washington may be reviewed and corrected, the said errors in said record being herewith assigned and presented herewith, and that pending the final determination of said writ of error by said Appellate Court, an order may be entered herein that all further proceedings be suspended and stayed, and that pending such final determination said defendants be admitted to bail.

JOHN F. DORE.

HERMON S. FRYE.

Attorneys for Defendants.

[Endorsed]: Filed Mar. 21, 1927. [29]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Come now the above-named defendants, Frank Gatt, John Gatt, Charles Romeo, Romeo Tronca and August Bianchi, and in connection with their petition for writ of error in this cause, submitted and filed herewith, assign the following errors which said defendants aver and say occurred in the pro-

ceedings and at the trial in the above-entitled cause and in the above-entitled court, and upon which they rely to reverse, set aside and correct the judgment and sentence entered herein, and say that there is manifest error appearing upon the face of the record and in the proceedings, in this:

I.

The Court erred in admitting the testimony of W. M. Whitney, a federal prohibition agent, over the objection of the defendants, to which ruling, of the Court an exception was allowed, wherein the said Whitney testified in substance that the envelope, to-wit, Government's Exhibit 46, found in the pocket of the defendant Frank Gatt at the time of his arrest, bearing certain street numbers, said street numbers being described by the said Whitney as bootlegging joints. [30]

II.

The Court erred in admitting the testimony of the said Whitney as to a conversation he had with James Rossi, which was a mere recital by Rossi, who was acting as informer for Whitney, of what the defendants on trial were doing.

III.

The Court erred in refusing to tell the jury what such testimony was not permissible, and erred further in saying to the jury that such testimony could be considered against all of the parties if a conspiracy was established and it was made in furtherance of the conspiracy, on the ground that it was apparent and evidence that it was not made in fur-

therance of anything and that the Court by such an instruction was compelling the jury to pass upon a matter of law which belonged exclusively to the Court.

IV.

The Court erred in refusing to give an instruction that such testimony could not be considered against any of the defendants on trial.

V.

The Court erred in permitting the said Whitney to testify that Rossi told him whenever he came to arrest Frank Gatt to be careful to search his pockets for a pack of papers that would show that the said Gatt had been collecting protection money for the police and for the sheriff of King County from bootlegging joints; and in permitting the said Whitney to testify that Rossi was collecting for Gatt, who would pass the money on to the police and sheriff, the money being collected from bootlegging establishments other than the Monte Carlo; and in permitting the said Whitney to testify that as high as \$12,000 a month was collected; and further, that the testimony given on cross-examination over objection, relating to the same matter, was reversible error. [31]

VI.

The Court erred in giving the instruction wherein conspiracy is defined as "a combination of two or more persons by concerted action to accomplish an agreement or unlawful purpose; the act itself is the essence of the charge."

VII.

The Court erred in giving the instruction as follows:

“Is any credence to be placed in the testimony of Pepe, or the statements made by Rossi to Whitney, as disclosed by Mr. Whitney. Pepe says that a conspiracy was formed. Whitney said what Rossi told him with relation to the activities of the defendant Frank Gatt. From the statements of both of these parties they were parties to the conspiracy. Pepe said what Gatt did, that he acted under the direction and supervision of Gatt; that the holding of the bill of sale which was executed in January, 1925, was without his knowledge—he knew nothing about it—it was given to him by Frank Gatt and that Gatt told him what his name was to be henceforth; and you heard his testimony with relation to statements made to him by Frank Gatt with relation to the conduct of the parties. Now you are instructed that Pepe’s testimony, likewise the statement of Mr. Rossi under the law are denominated accomplices, and the testimony of an accomplice is from a polluted source. Now the testimony of an accomplice should be received with care and caution and subjected to careful scrutiny in the light of all of the other evidence in the case; and the jury ought not to convict upon the testimony of an accomplice alone unless after a careful examination of such testi-

mony the jurors are satisfied beyond a reasonable doubt of its truth and that they can safely rely upon it."

VIII.

The Court erred in instructing the jury as follows:

"Did the exhibits that were taken from the person of Mr. Frank Gatt, did they show any corroboration of the witness Pepe's testimony, as disclosed upon the witness stand, or the testimony of Mr. Whitney as given here."

IX.

The Court erred in giving that part of his instruction beginning with the words, "I think I want to say something else," and ending with the words "judicial notice." [32]

X.

The Court erred in passing upon the exception, wherein he told the jury that they could consider Rossi's statement as disclosed by Mr. Whitney with all the other statements in the case.

XI.

Thereafter, and within the time limited by law and the order and rules of this Court, said defendants moved for a new trial, which said motion was overruled by the Court, and an exception allowed, which ruling of the Court the defendants now assign as error.

XII.

And the Court thereafter entered judgment and sentence against said defendants, upon the verdict of guilty rendered upon said indictment, to which

ruling and judgment and sentence the defendants excepted, and now the defendants assign as error that the Court so entered judgment and sentence upon the verdict.

And as to each and every of said assignments of error, as aforesaid, the defendants say that at the time of making of the order or ruling of the Court complained of, the defendants duly excepted and were allowed an exception wherever the same appears in the record to the ruling and order of the Court.

JOHN F. DORE,
HERMON S. FRYE,
Attorneys for Defendants.

[Endorsed] : Filed Mar. 21, 1927. [33]

[Title of Court and Cause.]

ORDER ALLOWING WRIT OF ERROR AND
FIXING AMOUNT OF BOND.

A writ of error is granted on this 11th day of January, 1926, and it is further ordered that, pending the review herein said defendants be admitted to bail, and that the amount of supersedeas bond to be filed by said defendants be Frank Gatt, \$5,000.00; John Gatt, \$5,000.00; Charles Romeo, \$3,000.00; August Bianchi, \$1,500.00, and Romeo Tronca, \$1,500.00.

And it is further ordered that, upon the said defendants filing their bonds in the aforesaid sum, to be approved by the Clerk of this court, they shall

be released from custody pending the determination of the writ of error herein assigned.

Done in open court, this 11th day of January, 1926.

JEREMIAH NETERER,

Judge.

[Endorsed]: Filed Mar. 21, 1927. [34]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING APRIL 10, 1926, TO FILE BILL OF EXCEPTIONS.

For good cause shown, IT IS HEREBY ORDERED that the time for filing the bill of exceptions in the above-entitled cause in the above-entitled court be and the same hereby is extended to and including the 10th day of April, 1926.

Done in open court this 22 day of March, 1926.

JEREMIAH NETERER,

Judge.

General Order Book No. 12, at page 172. [35]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 29th day of December, 1925, at the hour of ten o'clock in the forenoon, the above-entitled cause came on regu-

larly for trial in the above-entitled court, before the Honorable Jeremiah Neterer, Judge thereof, the plaintiff appearing by T. P. Revelle, United States Attorney for said District, and C. T. McKinney, Assistant United States Attorney, and the defendants Charles Romeo, August Bianchi, John Gatt and Frank Gatt being present in person and by their counsel, John F. Dore, and the defendant Romeo Tronca being present in person and by his counsel, Hermon S. Frye.

A jury having been regularly and duly impanelled and sworn to try the cause, and the Assistant United States Attorney having made a statement to the jury, the following evidence was thereupon offered:

TESTIMONY OF ADAM A. SHAFER, FOR THE GOVERNMENT.

ADAM A. SHAFER, a witness produced on behalf of the United States, being duly sworn, testified as follows: [36]

Direct Examination.

That on March 25, 1923, I went to the Monte Carlo Pool-room and bought two drinks over the bar from the defendant Bianchi. He rang the money up in the cash-register. The same thing occurred on the 26th.

That on March 28th, we went in there at the noon hour and bought two drinks from Bianchi. We asked the man in there for a bottle, he said, "I will get you a bottle," and he went out through the

(Testimony of Adam A. Shafer.)

back way into the alley; we stood at the end of the bar waiting for him to come back; in the meantime two police officers came in and were talking to Frank Gatt,—were standing in the middle of the floor in front of the bar; this man came in the front door with the bottle, and Frank Gatt grabbed him by the arm, turned him around and said something to him, and the man kept going through the place, through the pool-hall out into the alley; we followed him thinking we would identify him later, and he jumped into a Chinese laundry back in there; we waited for about half an hour, he did not come back; we reported it to Mr. Whitney, and that afternoon they got thirty gallons of liquor there. Mooring, who is now dead was there at the time. Frank Gatt came in just a few minutes before this man went out after the bottle and he was walking up and down in front of the bar. There was nobody else in there at that time; there were quite a number of men in back in the pool-room; there is a pool-room in the back and some card-tables on the side there.

I saw Bianchi and Romeo, and Frank and John Gatt; I think this Tronea was there, too.

In March, 1923, Romeo was a bottleman. [37]

TESTIMONY OF ARINELLO PEPE, FOR
THE GOVERNMENT.

ARINELLO PEPE, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I worked at the Monte Carlo, which is a pool-room, restaurant and barber-shop. I worked for Frank and John Gatt at the Monte Carlo. There is a bar there. I started to work in July, 1924, and worked there from July 24, 1924, to August 20, 1925. My first occupation was a bottleman. I carried a bottle in my pocket. When the bartender called for the bottle I would hand it to him across the bar, and when he got through with it he handed it back to me. I got this bottle in room 17 in the Paul House just above the Monte Carlo. There was on an average ten or twenty gallons of whiskey in room 17 in the Paul House right along. I worked from three o'clock in the afternoon to one in the morning. Bianchi paid me my salary. Bianchi got the money from John Gatt. When the bartender quit I became bartender. I worked as a bottleman about five or six months and was bartender a little over a month,—about a month. I sold lots of intoxicating liquor at the Monte Carlo and rang the money up in the cash-register. I took the money out of the register and I put it in the sack and leave \$25.00 in the register all the time. I put the balance right in the safe. The safe was

(Testimony of Arinello Pepe.)

open when I started to work and I would close it when I went out. When I leave at night I would put the money in the safe and close the safe. I don't know who opened it in the morning; Bianchi or John Gatt or Tronca together. It was open all day. I never had the combination to the safe. I got the key to room 17 from the bartender. Frank Gatt hired me to work there; the wages were \$110 a month. [38] I asked Frank Gatt once for more money. He said he was not making money enough to pay more. I asked him for more money when I became bartender. He said he can't afford to pay any more. Frank Gatt asked me to become bartender when I was in the Monte Carlo. I once told Frank Gatt that I was going to quit, I didn't have enough money, I wanted to quit, he said,—I ask him for job at the mine, to stay there; I never was quitting any more; go on the donkey-engine; he said as soon as the mine opens he gives me job at the mine running the donkey-engine; I didn't quit the Monte Carlo only for that proposition.

On February 28, 1925, Frank Gatt was in the place. I was in the Monte Carlo the night the Federal officers raided it. I had a bottle in my pocket if someone wanted a drink. I didn't sell that night; just asked me to get the bottle, I did and handed it to him and to give it to him right on the table. That was February 28th. Frank Gatt was there. He said, "Get the bottle"; I do, he was the boss. I got the bottle from room 17 and handed

(Testimony of Arinello Pepe.)

it to him when he was right in the office. It was Scotch whiskey. He gave it to somebody in the office. I had a pint of whiskey in my pocket the night I was arrested. I got out on bond Monday. Frank Gatt and his wife and kids was there. Also Bianchi, Tronca and Charley Romeo were there.

I am not an American citizen.

I went to Frank Gatt's house with August Bianchi. I was right in front of the Monte Carlo and telephone for me to August Bianchi, [39] and he tell me that, and we went to August Bianchi up to his house in an automobile.

Frank Gatt gave me a bill of sale to the Monte Carlo, that morning.

The next morning I met him with Charley Romeo. They gave me Government's Exhibit 26, and said my name was to be Tony Saracca. Bianchi was the morning bartender. On February 28th, Frank Gatt took the money out of the cash-register. I got the bill of sale on March 3d. I never heard the name of Tony Saracca until that date (March 3d).

I worked at the Monte Carlo from July, 1924, down to 1925, at \$110 per month. I became bartender in January, 1925. I was getting \$110 at the time and Bianchi paid me at the end of the month. Any time I need a little money I draw and the rest at the end of the month,—he gave me the rest. After I became bartender I take the pay myself, not all though, I take what I need from the register; make out a little slip and put it in the register.

(Testimony of Arinello Pepe.)

During 1925 I take the money myself and put a slip in the register. August Bianchi pay my wages and get from Johnny Gatt. I see him get it from Johnny Gatt myself. Johnny Gatt gave it to me a couple of times, Johnny Gatt and Frank Gatt, both of them. The bartender ahead of me gave me a key to room 17. I got it from him the first day I went to work in the Monte Carlo, July, 1924. The key I had to room 17 was the only key to room 17 that I knew anything about. I had that key since the first of the new year, 1925; I had it all the time myself, because I was bartender alone all the time. I didn't collect any money at all from the boot-black stand, the barber-shop or the restaurant. Johnny Gatt sold that barber-shop for three or four hundred dollars, I don't know how much; I think three hundred dollars. [40]

Them two fellows that are inside now bought the barber-shop. Johnny Gatt gave them the receipt. I never pay any rent to the Rainier Light & Power Company; was Mr. August Bianchi pay; Johnny Gatt gave me the money.

The first time I started paying the rent was the first time after I was out of the Immigration Station, the 3d of March. In January, 1925, I was come to the Rainier Power Company and pay the rent; Johnny Gatt gave that money to me and go ahead and pay the rent, and I did, and I never see anybody.

I was telling you, on the 3d of March when I was go out of the Immigration Station, first time I pay

(Testimony of Arinello Pepe.)

rent was me and August Bianchi together, Johnny Gatt gave us the money. I was up at Gatt's house, on Beacon Hill. We rode up there in a car we got in front of the Monte Carlo.

Johnny Gatt wrote that and I signed it at Johnny Gatt's request, at the same time August Bianchi tell me, he said Johnny Gatt wanted me to sign that. My name was supposed to be Tony Saracca at that time but it was Arinello Pepe.

Johnny Gatt got \$1,000 from the Chinaman. I didn't get any money. I just look at it on the table.

I am now working at water main and sewer ditch, pick and shovel. Before I go to Monte Carlo I worked as a laborer or anything.

TESTIMONY OF JOHN W. HANNUM, FOR THE GOVERNMENT.

JOHN W. HANNUM, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination. [41]

I am a minister. I have visited the Monte Carlo on May 13, 1924, and bought a drink there from a man named James Rossi. I went there again on May 13th. The same thing happened. We went back through the glass door in front there, and was quite a group of men in there, some of them playing pool on tables in the back part of the pool-room, and a group of men standing around; as we went up to the bar,—were two other men with me, Mr.

(Testimony of John W. Hamum.)

Backstrom and Mr. Walker, and Mr. Strange,—the four of us got near up to the bar and Strange asked for a shot of moonshine, and the man behind the bar whistled and another man stepped out of the bunch, the man who was back towards the outside, and came forward and pulled a bottle out and handed it across the counter to this man, and he poured out four little glasses of whiskey. The man back of the bar took the money and put it in his pocket. The man did the same thing the first time. Mr. Strange paid for it both times.

McCRORY'S TESTIMONY.

On December 11, 1923, I bought drinks from Rossi and Cicei. In January and February I purchased drinks from Rossi. In March I did the same, and likewise in May. Agent Carruthers and myself went to the Monte Carlo, we each purchased two drinks of moonshine whiskey from Jim Rossi; Cicei was acting as bottleman; passed the bottle over the bar, as he always does on each occasion; we each gave him, Rossi, fifty cents for the two drinks; I asked for a half pint of moonshine whiskey; Rossi directed Cicei to go back and get a half pint, which he did, and he went back and passed the bottle over to Rossi and he in turn handed the bottle to me, and I gave him \$1.00 for it. That is the bottle we bought from James Rossi on January 8th and which we thereafter delivered to Bill Whitney. Rossi rang the money up in the cash-register. [42]

(Testimony of — McCrory.)

In June at different times I bought drinks from Rossi, Ciccì and Bianchi. I was in there for lunch on this date, sitting at the lunch-counter looking through the mirror back there to see what was going on at the bar behind me. Several men came in and purchased drinks over the bar from Rossi and Ciccì acted as bottleman. The mirror was back of the lunch-counter. The lunch-counter would be on the south side of the building, straight across from the bar and I could see through the mirror what was going on behind me.

I went to Monte Carlo on February 14th with a man by the name of Diller and I purchased two drinks of moonshine whiskey from Jim Rossi and Ciccì; I gave him fifty cents for the two drinks, and the money was rang up on the cash-register. On February 20th I went in alone and purchased a drink from Rossi, for which I paid twenty-five cents. He rang the money up in the cash-register.

I went to Monte Carlo on March 8th, about ten o'clock in the morning and I purchased one drink of moonshine from Bianchi and gave him twenty-five cents, and the money was rang up on the cash-register.

Agent Carruthers and myself went to the Monte Carlo on May 5th, went to the bar and ordered drinks from Jim Rossi, Ciccì was acting as bottleman; we each purchased two drinks of moonshine whiskey, and we each gave him fifth cents for the two drinks; the money was rang up in the cash-register.

(Testimony of — McCrory.)

Frank Gatt was standing at the office door at the time. The bar would be like this and the office would be on the west end of the bar,—west end of the bar. There was a door leading [43] from the office behind the bar. There was another door that led out into the main part of the room from the office. Frank Gatt was standing in the door back of the bar. He was looking out at the bar, at the crowd whoever was there.

On May 8th, in company with Agent Carruthers, we went to the Monte Carlo and we each purchased two drinks of moonshine whiskey, gave him fifty cents each for the drinks, the money was rang up in the cash-register.

On May 26th, about ten o'clock in the evening, Agent Corwin and myself went to the Monte Carlo, James Rossi was behind the bar, and I ordered two drinks of moonshine whiskey and the bottle was passed over the bar by Ciccì, and James Rossi served the drinks; Corwin ordered two more drinks, and went through the same way, and I ordered a half pint from Rossi; he sent Ciccì to the back end of the place to get the half pint, he brought it back and Ciccì passed the bottle over to Rossi, and Rossi in turn gave me the bottle and I gave him the \$1.00 for the bottle, and he rang it up on the cash-register.

This is the half pint I bought on the 26th from Jim Rossi and which I thereafter delivered to Bill Whitney.

Frank Gatt was present, standing in the office door when I bought it.

(Testimony of — McCrory.)

About eight o'clock in the morning of May 29th, 1924, Agent Lambert and I went to Monte Carlo, Bianchi was behind the bar, and we each ordered two drinks of moonshine whiskey; we each gave him fifty cents for the two drinks and he rang it up on the cash-register; I ordered half a pint from Bianchi, and he sent Cicci, the bottleman, to get the half pint, and he handed it to me and I gave him \$1.00 and he rang it up on the cash-register. [44]

On June 13th, I went there alone and purchased two drinks of moonshine from Jim Rossi and Cicci, and gave him fifty cents for the drinks, and he rang that up on the cash-register.

On June 14th I went alone and purchased two drinks from Bianchi, gave him fifty cents for the drinks and he rang that up on the cash-register. As I remember Cicci was present with Bianchi.

On July 11th, I went there again in the morning and purchased two drinks from Bianchi, and gave him fifty cents for the drinks and he rang them up on the cash-register.

As I remember it the bottleman there was Tronca. I paid Bianchi for the drinks.

On August 29th, I went there alone and I purchased two drinks from the old bottleman named Cicci; he was behind the bar at this time; I gave him fifty cents for the two drinks and he rang the money up on the cash-register.

In July 11, 1924, I bought drinks, the bottleman

(Testimony of — McCrory.)

was Tronea. In August I bought drinks from Cicei, and also in September and October.

Cross-examination.

On September 22d I saw Romeo and Tronea there about two o'clock in the afternoon. Romeo Tronea was bottleman.

Tronea was also there on September 25th, also October 27 and 29. I never bought of Tronea.

TESTIMONY OF ERVEN H. CARRUTHERS,
FOR THE GOVERNMENT.

ERVEN H. CARRUTHERS, a witness produced on behalf of the Government, being duly sworn, testified as follows: [45]

Direct Examination.

I am a Federal Prohibition Agent. I was with McCrory at the times described by him, when he purchased the liquor from Rossi, Cicei and Bianchi.

Agent McCrory and I went in the place and James Rossi was behind the bar, and Lewis Cicei was out in front of the bar, Lewis Cicei was the bottleman, and McCrory and I stepped up to the bar and spoke to Rossi, and asked him for a drink of Scotch whiskey; Rossi spoke to Cicei and asked for the Scotch whiskey bottle. Cicei removed the bottle from his hip pocket and handed it over the bar to Rossi and Rossi served the drinks; we purchased two drinks apiece, and then he handed the bottle back to Cicei, and he handed the bottle back

(Testimony of Erven H. Carruthers.)

to Cicci, and he put the bottle in his pocket. McCrory and I each paid Rossi \$1.00 or fifty cents apiece for the drinks, and he rang the money up on the cash-register.

On January 8th, 1925, McCrory and I entered the place, and Rossi was behind the bar and Cicci was in front of the bar; we each asked for a drink, and Rossi asked Cicci for the moonshine bottle this time, and he removed the bottle from his hip pocket handed it over the bar the Rossi, and Rossi served each of us two drinks; we each paid fifty cents for the drinks, and Rossi rang the money up on the cash-register. McCrory asked Rossi if he would sell him half a pint; at this time Rossi asked Cicci to go get a half pint, as Cicci went out the back door of the place he returned in a short time with a half pint of moonshine whiskey, going to the end of the bar and Rossi came and got the half pint and came and put it on the center of the bar, and handed it over the bar to McCrory; McCrory paid him \$1.25 for the half pint and he rang it up on the cash-register.

On May 5th I went again. Rossi was behind the bar, Cicci [46] was in front of the bar; we each purchased two drinks of moonshine going through the same maneuvers as before; Cicci had the bottle in his pocket, and during this transaction Frank Gatt was standing in the office door, like this would be the bar, and the office would be at the other end, and Frank Gatt was standing facing the bar, so that he was looking at us when the transaction took

(Testimony of Erven H. Carruthers.)

place; the money was rung up on the cash-register.

September 22d was the next time I was in there. Ciccì was behind the bar, and Romeo Tronca was bottleman. He had the bottle in his pocket, and we stepped up to the bar and Lew Ciccì was behind the bar, and each asked for a drink of moonshine, and the liquor was served, as on former occasions, and the money was rung up on the cash-register.

On September 28th I went there again. Ciccì was behind the bar, and Charles Romeo was sitting on a stool over near the lunch-counter, and he did not have the bottle, but I see him nod his head to some other people that came into the bar and ask for drinks. He was sitting at a stool at the lunch-counter like the bar would be on this side of the room, and the lunch-counter was on the other side of the room, and he was sitting at the lunch-counter facing the bar.

Cross-examination.

I was there on the forenoon of the 22d of September. Romeo Tronca was acting as bottleman at that time. I am certain he was there.

**TESTIMONY OF R. C. JACKSON, FOR THE
GOVERNMENT.**

R. C. JACKSON, a witness produced on behalf of the Government, [47] being duly sworn, testified as follows:

Direct Examination.

On June 11, 1924, together with Agent Corwin, I bought a drink from Jim Rossi. He was the bartender at the Monte Carlo.

**TESTIMONY OF H. G. BACKSTROM, FOR
THE GOVERNMENT.**

H. G. BACKSTROM, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

On May 13, 1924, I bought a drink at the Monte Carlo from James Rossi. The money paid for the drink was rung up on the cash-register.

**TESTIMONY OF R. A. LAMBERT, FOR THE
GOVERNMENT.**

R. A. LAMBERT, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

On May 29, 1924, Bianchi was behind the bar and Cicci was in front of the bar at the Monte

(Testimony of Earl Corwin.)

Carlo. Agent McCrory and I bought drinks from Ciccì and Bianchi. McCrory handed him \$1.00 and he rang that up on the cash-register, and we left the place.

TESTIMONY OF EARL CORWIN, FOR THE GOVERNMENT.

EARL CORWIN, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I was a prohibition agent on January 14, 1924, I bought liquor from Jim Rossi at the Monte Carlo. In March I did likewise. Ciccì and Rossi aided in the sale. Several times in April I purchased drinks from Rossi and Ciccì, and also in May. In June, 1924, [48] I bought of Rossi. On February 28, 1925, I served a federal search-warrant on the Monte Carlo. Frank Gatt and a number of other people were in the office, sitting at a table, upon which was a bottle of whiskey and whiskey glasses. I searched Pepe the bartender and took from him a key to room 17 of the St. Paul Hotel. There was a cache in this room that contained various kinds of intoxicating liquor. Frank Gatt had the combination to the safe. He took the money from the cash-register and put it in the safe. Frank Gatt protested against the bar and fixtures being destroyed. Tronea was not there that night, neither was John Gatt.

(Testimony of Earl Corwin.)

The first time I visited these premises was January 14, 1924, I believe. I went there with Agent McCrory on that date and purchased two drinks of moonshine from the bartender, Jimmy Rossi, and a man by the name of Ciccì acted as bottleman at that time. I bought two drinks of moonshine for each of us paying twenty-five cents a drink. The money was rung up in the cash-register.

I went there again on February 11, 1924, and bought three drinks from the bartender, James Rossi, and paid twenty-five cents apiece for a drink.

Ciccì was the bottleman and handed the bottle over the bar to Rossi, Rossi served the drinks, I paid Rossi the money. It was rung up on the cash-register.

I was back there again on March 7th, and I purchased two drinks of moonshine whiskey from Rossi, Ciccì was bottleman; I remained in the place about fifteen or twenty minutes, had some conversation with Rossi, about the election that was coming up; I asked him what all he had, and he said, "We haven't got anything here but moonshine tonight, but if the election goes right we *will other* things to drink after the election" intended to put [49] *to put* in gin and bonded whiskey, bourbon and Scotch.

On March 27th I was in and bought three drinks of moonshine whiskey from Rossi, and paid him twenty-five cents a drink; Ciccì was acting as bottleman at that time. There were customers standing outside buying drinks over the bar, buying first off

(Testimony of Earl Corwin.)

of Rossi and Cicei. The money was rung up in the cash-register.

I went there in the evening of April the 8th and James Rossi was behind the bar; I purchased one drink of bourbon whiskey from Rossi and Cicei.

On April 26th I was there again and bought three drinks of Scotch from Rossi, Cicei was acting as bottleman, had the bottles in his pocket, and handed them over the bar; I paid Rossi fifty cents a drink for the Scotch, and at that time Frank Gatt was standing in the office door looking out along the length of the bar.

On May 3d, I went again and purchased two drinks of Scotch from Rossi and Cicei and Gatt was also present on that occasion. He was standing behind the bar near the office door.

On May 6th I bought three drinks of Scotch in there from Rossi and Cicei; Frank Gatt was standing outside of the bar with four Italians, they were being served by Rossi and Cicei; were a number of other people standing at the bar, and Gatt rapped on the bar with some money;—wanted Rossi to come and wait on him; Rossi called out something to him; I didn't understand what, and Gatt came behind the bar and Cicei handed the bottle over the bar to Gatt, and Gatt served the drinks to the four Italians and took one himself from every round of drinks served, and Gatt took the money for it and rang it up on the cash-register.

On May 26, 1924, I went back there with Agent McCrory and bought two drinks of moonshine whis-

(Testimony of Earl Corwin.)

key and half pint of moonshine [50] whiskey from Rossi, Frank Gatt was present at that time standing behind the bar.

On June 11, 1924, I went back again with Agent Johnson. Purchased two drinks of Scotch whiskey from Rossi.

February 28th, I believe, I was in possession of a federal search-warrant and accompanied by Agents Johnson, Linville, Kline, Mooring (now dead), and Indian Agent Shirley. We went in the place in the front door, and served the search-warrant on Arinello Pepe who was behind the bar, searched him and from his person took a pint bottle of whiskey, and later on I searched him and found a key in his hat.

In the office at the west end of the bar I found Frank Gatt and a number of other people, among them Frank Gatt's wife and two children, on a tray on the table in that room were five whiskey serving glasses and each glass contained a small quantity of whiskey, and from the person of one of the men in the room I took a quart bottle of whiskey.

Frank Gatt and his wife, two children, Detective Samuelson and Detective Cleary, of the Seattle Police Department and the agents that accompanied me on the raid were present.

After I had arrested the defendants behind the bar and in the office, I left one of the agents in charge, and went up to room 17 of the St. Paul Hotel where Agent Whitney was, and where he had

(Testimony of Earl Corwin.)

found a quantity of intoxicating liquor, and he returned to the office of the Monte Carlo, and searched a portion of the defendants; I searched Arinello Pepe, the bartender, and from his cap I took a key that fitted the lock to room 17 of the St. Paul Hotel, that is a hotel directly above the Monte Carlo. From the person of Frank Gatt I saw Mr. Whitney take a number of cards and memorandum of various sorts. [51]

This is Exhibit No. 33, the key that I took from the cap of Arinello Pepe, the lock to room 17 of the St. Paul Hotel which was unlocked by that key to the lock of the mechanism of the cache,—that is the lock to the room,—the door to the room, and the locking mechanism of the cache whereby a secret contrivance was operated by clothes hooks in the room.

The closet in the northeast corner of this room has been built over,—a door built over it which could not be seen, slid in the wallpaper, and was built out from the door with a curtain hanging over it. By operating a clothes hook over the door it actuated this mechanism and allowed this secret door to open, giving access to this clothes closet. This clothes closet was fitted up as a cache and contained a large quantity of intoxicating liquor,—brandy, Scotch, gin, vermouth, absinthe, moonshine whiskey, colored and not; several kinds of liquor.

There was something in the neighborhood of thirty gallons of moonshine whiskey and seven or

(Testimony of Earl Corwin.)

eight cases of assorted liquors, that is, imported liquors, in the room.

After seizing these intoxicating liquors I returned to the Monte Carlo,—made a complete search of the room, and I found a bottle containing moonshine whiskey cached around in the storeroom and under the bar; under the back bar found various items and papers some of which were in a brief case, the property of Frank Gatt.

This brief case was setting in a bottle rack behind and under the back bar.

The entire premises are described as follows: The premises known as 404 Fifth Avenue South is a storeroom faces west on Fifth Avenue South; upon going into the door,—just before going into the door the barber-shop is on your left-hand side; going inside the door is the office with a door leading [52] into the office from the outside of the bar; directly in the rear of the office is the bar about 30 or 35 feet long, full back bar behind it. At the east end of the bar is a stove, a large ice-box and in the rear of that a large room fitted up with billiard and pool tables, and I believe a few card-tables as well; there were several smaller rooms; it was in the back room that he had his storeroom and lavatory.

The bar was one of the old-fashioned bars; full mahogany bar; the back bar had a large mirror in it the full length of it, and underneath the bottom part of the bar was fitted up with compartments to hold bottles, and in one of the compart-

(Testimony of Earl Corwin.)

ments was where I found the brief case; and also in the back bar seven or eight holders in all of which we found various papers and documents.

The brief case contained the articles of incorporation and stock-book, I believe, of the Outlook Mining Company, of which Frank Gatt was listed as one of the directors; also contained the names of other directors and stockholders of the company and officers of the company.

The names of defendants James Rossi, Romeo Tronea, and I believe, August Bianchi, Matt Starwich,—Frank and John Gatt, appeared in the book. Also Charles Romeo and two or three other names I do not recall.

Gatt stated that he was in the mining business, that was his sole business, and he used the Monte Carlo as his office.

There was a safe in the place but it was not open on the night we raided it. I asked the defendants that were present if any of them had the combination of the safe; all of them denied having it, and I told them collectively I would have to open the safe myself if it was not opened, and Frank Gatt stated, "It is a [53] shame to spoil a good safe like that. I will open it for you, I have the combination"; and he opened the safe; we made a search of the safe and found a small quantity of money in it.

When Frank Gatt was leaving the place he took the money from the cash-register and placed it in the safe.

(Testimony of Earl Corwin.)

As we were demolishing the bar Frank Gatt objected at least half a dozen times, saying, "That is a shame to spoil that bar, perfectly good bar; that we had done enough damage that night; no use of going any further, everything was closed, that we had the place; to let it go that way."

He said it was a shame to break that up, he could use it again, if it was not destroyed, in some other place.

I had a conversation with all the defendants that night. I questioned them all and took their personal history; asked them about their interest in the place. I first questioned Arinello Pepe and he stated to me at that time he was employed there by a man, whom he did not know; had been working there for four or five months; and I questioned Charles Romeo and he stated he had been an owner of the place, but had sold out some three or four months prior to the time of the raid. As I recall Bianchi denied having anything to do with it at all. John Gatt was not there at the time of the raid; Frank Gatt denied he had anything to do with it for over a year past. I talked that night to Frank Gatt, August Bianchi, Charles Romeo, Arinello Pepe and Lew Morelli.

**TESTIMONY OF W. M. WHITNEY, FOR THE
GOVERNMENT.**

W. M. WHITNEY, a witness produced on behalf of the Government, being duly sworn, testified as follows: [54]

Direct Examination.

I am the legal adviser of the Prohibition Department. In November, 1923, I bought liquor of Rossi and Cicci.

I was there in March, I believe, 1923, was the first,—I may have been in there in 1922; I have been in and out of those premises ever since I have been connected with the office.

On November 25, 1923, in the evening about nine o'clock on Sunday evening, as I recall, I was in the lower end of town making some investigations, and I noticed a number of men going into the Monte Carlo so I followed, and walked in,—walked right in with them as if I was a member of the party; they walked up to the bar; there are swinging doors as you enter these premises, then immediately to the left there was an office, and then just to the east of this office there was a long bar on the right-hand side as you enter, and to the south there was a restaurant and lunch-counter, in the rear of that a number of pool-tables and card-tables; was oh, about fifteen men standing at the bar drinking when I went in. Jim Rossi was behind the bar, a man by the name of Cicci was in front of the bar. These men would order drinks and the bar-

(Testimony of W. M. Whitney.)

tender, I heard him ask him if he wanted the white or the red, and whichever it was, white or red, Cicei would take a bottle out of his hip pocket, pass it over the bar and bartender Rossi would pour the drinks. When they came down to where I was standing he asked me what I wanted, I just laid a half-dollar on the bar,—was acting as if I was a member of this party, and I said, “I would have some of the red”; Cicei passed the red bottle over the bar and Rossi poured me out a glass of whiskey; I paid Rossi fifty cents, the bottle was passed back to Cicei by Rossi, and the fifty cents was rung up on the cash-register. After I had that drink I asked Rossi if I could get half a pint of that, [55] “That is pretty good stuff, I would like to get a half-pint of that whiskey”; rather a stillness fell for a moment, and John Gatt,—something was said by Rossi, and John Gatt was standing in the doorway of this office; as I recall it there was a curtain that partially shut off the doorway from behind the bar into the office, and there was a door that entered the office there in front of the bar; as you entered the office there in front of the bar; as you entered into the main part of the bar-room there was also an entryway that went from behind the bar into this office, and there was a curtain, as I recall it, partially pulled back, and John Gatt was standing there, and Gatt and another man that was standing in front of the bar engaged me in conversation, wanted to know who I was, and wanted to know what I was, and who I knew

(Testimony of W. M. Whitney.)

around there; and I said, "Yes, I knew a number of men around the courthouse," I mentioned two or three I knew, and John Gatt then said,—nodded his head and said, "All right"; Romeo Tranca was in there, although he didn't seem to take any part in anything that occurred in the room at the time. After Gatt told,—John Gatt told Rossi it was all right, Rossi then said to Ciccì,—nodded his head and said, "All right," and Ciccì left the room and was gone a couple of minutes, went out the back and came back, and while he was gone I ordered another drink and also bought a drink for a man that was standing at the bar next to me, and it was served in the same way, except that Rossi had a bottle there underneath the bar, and poured these drinks out, and I paid him \$1.00 for the two drinks, and the money was rung up in the cash-register; then in a short time Ciccì came back, passed the half-pint bottle over the bar and Rossi then passed it to me and I paid him \$3.00 for that half pint of whiskey; the [56] bottle is on the table that I purchased: I retained that bottle.

I retained it in my locker that I have in the Prohibition Office for a few days, and turned it over to Agent Kline.

I was in these premises at the time of the raid, February 28th, 1925, I was there also in December, I believe, either the day before or the day after Christmas, in 1924, when there was a raid at that place; I didn't go with the officers at first, but

(Testimony of W. M. Whitney.)

came down before they left, at which time they had Lew Cicci under arrest. On February 28, was the next time I was there, 1925, along in the afternoon between 5:30 and 6:00 o'clock in the evening; I had a search-warrant for 404½ Fifth Avenue South, which is immediately over the Monte Carlo; I went upstairs, and in going around to the various rooms I came to room 17, which had a Yale lock on it; I could smell from the hallway the odor that I am familiar with of whiskey, and the proprietor of this place had no key with which he could unlock this door. After I had been there ten minutes probably someone sent for me downstairs, and I went downstairs, and downstairs in the Monte Carlo I went in the front way, and I saw in the office standing around a large round table in this office the following persons: Councilman Hesketh, Detective Martin Cleary, and another one by the name of Samuelson or Simondson, Frank Gatt, Mrs. Gatt, I believe she was sitting down with the two children, and another man whose name I have forgotten, but whose name I have in my notes some place. There was also standing behind the bar Arinello Pepe, who was on the stand earlier; there were quite a number of people in the place, some of them standing, some sitting at the lunch-counter, on the lunch-counter stools. I came back, I saw this tray on the counter with the glasses on that have been produced in evidence, with a little liquor in each of the glasses; also this bottle that was on the tray with probably

(Testimony of W. M. Whitney.)

an ounce, or [57] half-ounce or three-quarters of liquor in it; also saw the bottle that was taken from Pepe that was introduced in the last trial; this bottle has not been in the possession of any prohibition officer since it has been introduced at the last trial; it is empty. Pepe stated he had that bottle of whiskey on his person. I immediately went in and spoke to Gatt, and spoke to Hesketh. I asked Hesketh in the presence of Gatt what he was doing down there, he said, "I came down here to have a talk with Frank Gatt about renewing his pool-room and card-room licenses; just down here investigating," and Gatt stated that that was so, also stated that that was what Hesketh was there for. I then searched the person of Frank Gatt,—or just about that time Corwin brought Pepe inside of the door and searched his person, and I saw Corwin take from the person of Pepe, from his cap this key, which Corwin immediately turned over to me; he stated, I believe, that might unlock room 17; anyway he turned it to me and I stuck it in my pocket for a minute; I then searched the person of Frank Gatt, that is where I took from one of his pockets—vest pockets the folded memorandum which is there on the desk; I don't know what the number of the exhibit is.

Exhibit 52 is the *car* that I took from in back of the bar, a little later on in one of the drawers in the back bar; that is the *car* upon which is marked Government's Exhibit 52. The other three cards of the Monte Carlo with the names on them, and

(Testimony of W. M. Whitney.)

it was attached to Government's Exhibit 52 and upon each of which there is a memorandum or writing in purple ink, which I know is written by Gatt because he said so. I took from Gatt's person this check-book.

I had told Frank Gatt when I first *when* in he was under arrest. This exhibit 44 I took from the person of Frank Gatt; had it in his pocket. This was on the night of February 28, 1925.

Government's Exhibit 46 I took from his vest pocket, folded up in the way it naturally folds up.
[58]

Mr. Whitney identified Government's Exhibit 46, as a paper which he took out of Frank Gatt's vest pocket, folded up naturally, and testified that he was familiar with the premises and buildings mentioned on the exhibit as they were on February 28th, 1925.

Q. Now, Mr. Whitney, are you familiar with those premises described in that exhibit?

A. Yes, sir.

Q. Do you know what kind of premises those buildings were?

Objected to by the defendants on the ground that it is incompetent, irrelevant and immaterial. Objection overruled and an exception allowed.

A. Yes, sir.

Q. What kind were they?

Same objection by the defendants, on the same grounds.

(Testimony of W. M. Whitney.)

The Silver Dollar is a soft-drink joint at 217½ Second Avenue South; 116 Third Avenue South is a soft-drink bar and bootlegging joint. 104½ Fourth Avenue South was a soft-drink bar and bootlegging joint.

Mr. DORE.—We ask an exception to all this testimony.

The COURT.—Yes, note an exception.

That the Silver Dollar is a soft-drink joint at 217½-2d Avenue, South.

That 116-3d Ave. South is a soft-drink bar, and bootlegging joint.

That 104½-4th Ave. South was a soft-drink bar and bootlegging joint.

215-2d Ave. South at that time was a bootlegging joint and had a bar and soft-drink place similar to the Silver Dollar near it.

The South Pole was at the northwest corner of Dearborn and 6th Ave. South, a soft-drink bar and bootlegging joint.

211½-2d Ave. South was a bootlegging joint downstairs similarly fitted up as the Silver Dollar.

105 Washington Street was a bootlegging joint and soft-drink bar.

217½ Washington Street was up to a few days before the raid on the Monte Carlo a bootlegging and soft-drink joint.

104 Washington Street was a sort of soft-drink and bootlegging joint.

101 Occidental up to a few days before the raid on the Monte Carlo was a bootlegging joint and a

(Testimony of W. M. Whitney.)

soft-drink place in the basement under Joe Dizards.

On the reverse side of exhibit 46—

215-2d Ave. South was a bootlegging joint at that time. [59]

Mr. Whitney further testified that exhibit 50 was taken from the wall back of the bar on the day of the raid, February 28th, 1925.

That exhibit 47 was taken out of one of the drawers of the back bar of the Monte Carlo on February 28, 1925.

That exhibit 48 was taken by the witness from the same drawer on the same date.

That exhibit 50, 47 and 48 were introduced in evidence.

That exhibit 49 was taken by the witness off the wall of the Monte Carlo back of the bar on the day of the raid February 28, 1925, and the same was admitted in evidence.

That Government's Exhibit 54 was taken by the witness from a drawer on the back bar immediately back of the slot machine which was on the bar the day of the raid, February 28, 1925; the slot machine was one of the new models that were being placed at that time. The exhibit was admitted in evidence.

That Government's Exhibit 55 was found by the witness in one of the drawers in the back bar of the Monte Carlo on February 28, 1925, and was admitted in evidence.

(Testimony of W. M. Whitney.)

Government's Exhibit 51 was found by the witness in the same place on the same date, and was admitted in evidence.

Government's Exhibit 53 was taken from the same place by the witness at the same time, and the defendant Frank Gatt admitted that the writing on the exhibit in purple ink was in his handwriting, and the exhibit was admitted in evidence.

Exhibits 38, 39, 40, 41, and 42, and 43, were admitted in evidence over the objection of defendants on the ground that they had no bearing on the case, exception allowed. [60]

Mr. Whitney further testified that on the night of February 28, 1925, he assisted in searching the persons of Pepe and Frank Gatt; that one Hesketh and two plain clothes men were present; that he saw Agent Corwin take a key from the person of Pepe with which he went upstairs and opened up the Yale lock on room 17; that said room was not occupied; that it smelled strongly of whiskey; that he found a large secret cache in one corner in which there was found a large quantity of assorted liquors, of about 30 gallons of moonshine, 5 cases of bonded whiskey among the brands of which were Teacher's and Black and White; that after finding the liquors he came down again to the Monte Carlo, assisted in the search, found the articles heretofore identified and engaged Frank Gatt in conversation; that there was a locked safe in the office; that defendants Romeo and Pepe claimed not to have the combination but Frank Gatt

(Testimony of W. M. Whitney.)

at this time stated he had sold the Monte Carlo to Charles Romeo and Romeo Tranca on January 19, 1924, and had executed a bill of sale to the same; that he and his brother John Gatt had owned the Monte Carlo for a period of about five years previously.

Mr. Whitney further testified that he questioned the defendant Gatt quite closely regarding the ownership and operation of the Monte Carlo because a short time previously he had talked a number of times with one of the employees of Frank Gatt, a defendant named James Rossi; that the witness talked to Rossi in December, 1924, and in January, 1925, and February, 1925, and talked to him personally on a number of other occasions during those months over the telephone; that Rossi stated that he was at all those times before the raid on the Monte Carlo and was still in the employ of and working with Frank Gatt; that he went to work first for Frank and John Gatt several months prior to November, 1923, as a bartender [61] in the Monte Carlo at one hundred ten dollars per month; that he worked one of the shifts of eight hours at the Monte Carlo from the time of his employment until in the early summer of 1924, after which time he became an outside man in the selling and handling of whiskey and in helping to operate some stills for the Gatts and the Monte Carlo outfit and also became a collector for the Gatts which Rossi stated to the witness was his business at the time of these conversations. Rossi further

(Testimony of W. M. Whitney.)

told witness that while he was bartender John and Frank Gatt were the owners of the Monte Carlo and the principal ones connected with the Monte Carlo outfit; that in the Monte Carlo outfit were Louis Ciccì, Frank Gatt, John Gatt, Charles Romeo, Romeo Tranca and August Bianchia; that until the summer of 1924, he sold whiskey over the bar; that they always had a bottleman or man in front of the bar whose business it was to carry the bottle; that Frank Gatt carried on his whiskey business out of the Monte Carlo and saw those he supplied with moonshine in the office of the Monte Carlo; that when he, Rossi, went to work he would find a certain amount of the money left in the cash-register; that he rang up the money in the cash-register for the sales of whiskey and that Frank Gatt at least once a day came and counted up the money and would take the money and that sometimes John Gatt would come and count up and take the money; that he would get his wages as long as he was at the Monte Carlo from either Frank or John Gatt and that he has seen August Bianchia also get his money from John or Frank Gatt. Rossi stated to witness that someone came into the Monte Carlo two or three days after Rossi had sold Mr. Whitney whiskey in November, 1925, and told Frank Gatt that it was Whitney to whom he had sold whiskey a short time before, and that Gatt got scared and told Rossi to lay off a few days on the selling; that the Gatts became worried in January, 1924, over [62] the rumor that Mr. Whit-

(Testimony of W. M. Whitney.)

ney was attempting to apprehend the Monte Carlo and on January 19, 1924, Frank Gatt made a bill of sale to Charles Romeo and Romeo Tronca; that the bill of sale stated that the price was six thousand dollars; that this was a fake bill of sale; that neither Tronca nor Romeo paid Frank Gatt anything, that they simply allowed Gatt to transfer the property to them and that at all times up into February, 1925, Frank Gatt and John Gatt were the owners of the Monte Carlo and neither Rossi, Tronca or Romeo had anything to do with the Monte Carlo as owners and that Frank Gatt continued to take the money every day after he executed the bill of sale just like he did before. That one of the reasons that Tronca and Romeo in February, 1924, executed a bill of sale of one-third interest in the Monte Carlo to Rossi was that Rossi applied for and got from the City Council of Seattle a card-room and pool-table license because only citizens could get licenses and neither Tronca nor Romeo were citizens; that Rossi did not put up any money for this alleged interest, and that in fact he, Rossi, had not any interest; that this arrangement was gone through at the request of Frank and John Gatt. That he, Rossi, executed a bill of sale for his interest over to Tronca and Romeo; that neither Tronca nor Romeo paid him anything for this. That Charles Romeo was the right-hand man of Frank Gatt, and they worked together in the whiskey business out of the Monte Carlo; that later Romeo Tronca made a bill of sale to Charles

(Testimony of W. M. Whitney.)

Romeo; that Tronca, so far as the Monte Carlo is concerned, merely held title to cover up for Frank Gatt; that later Romeo Tronca made a bill of sale to a fictitious person under the name of Tony Saraci and when Rossi talked to witness in February, 1925, they had not yet found anyone who would answer as Tony Saraci; that Rossi, Romeo, and Tronca had often talked the matter over with Frank Gatt as to [63] the covering up of the ownership; that these fake bills of sale; that he knew Gatt paid Romeo and Tronca money but he did not know exactly how much they were getting but he did know August Bianchia was getting one hundred ten dollars per month; that room 17 at the Saint Paul Rooms, 404½ Fifth Avenue South, just over the Monte Carlo was used as a *chach* and had been used for a long time and even before he, Rossi, went to work at the Monte Carlo and that it was still being used in February, 1925, and that Rossi explained to the witness just where the secret cache was in room 17, and how to open it and get into it; that if they raided the Monte Carlo and searched the bartender they would find the key on his person which would open it and get into it; that they sometimes carried 20 to 25 gallons of whiskey and several cases of bonded stuff in this cache. That Rossi told the witness in February, 1925, that he would notify the witness when the cache was filled up and said that they were about to put a large quantity of liquor in the cache and he, Rossi, would phone witness when it was

(Testimony of W. M. Whitney.)

full and that Rossi did a few days later phone him that the liquor was in the cache and he would find the key to the cache and said that Gatt often came in the evening to the office in the Monte Carlo and concluded his deals for liquor in the office. The defendant Rossi also stated to the witness that if they arrested and searched Frank Gatt they would find in his pocket papers and documents showing the places that the Gatts were doing business with the amount they paid; that defendant Rossi further stated to witness that while he was working as bartender August Bianchia was working as morning bartender, working until about four o'clock in the afternoon at which time Rossi went on shift; that Bianchia had a bottleman as well as he, Rossi. Rossi further stated to the witness that Frank Gatt was working in the Monte Carlo as a bartender up until the early part of 1923, after which time he [64] did not work very much.

At this time, 5:05 P. M. an adjournment was taken until 9:30 A. M., December 30, 1925.

Direct Examination of Mr. WHITNEY Resumed.

Mr. Whitney resumed the narrative of his conversation with Rossi and stated that Rossi had told him he was just a day or two before the raid on the Monte Carlo that he was still in the employ of Frank Gatt getting one hundred ten dollars per month and had informed witness that room 17 of the Saint Paul Rooms, 404½ Fifth Avenue South was being fitted up and well stocked with liquors and that the witness would find the cache full as he

(Testimony of W. M. Whitney.)

had told witness a few days before he would let him know when it was stocked; that this cache was merely a working cache for the Monte Carlo and a few of the smaller establishments for which the Monte Carlo furnished whiskey around there and that the cache would be full by the time we could make the raid.

Rossi further stated to the witness that in December, 1924, and January, 1925, that either Frank Gatt or John Gatt would come each morning and get the money—

Mr. DORE.—We ask the jury be instructed that this testimony only goes as against the defendant Rossi, it cannot be taken to establish any fact against any other defendant.

Mr. McKINNEY.—This is a conversation I understand prior to the termination of the conspiracy.

Q. (By the COURT.) When was this conspiracy?

A. It was in the fall of 1924 or early part of January, 1925.

The COURT.—Very well, go ahead.

Mr. DORE.—I renew the request. Is the request for such an instruction denied at this time?

The COURT.—At this time.

Mr. DORE.—Note an exception. [65]

The COURT.—I will state that unless the conspiracy is established between these parties, of which Rossi is a part, then the statement made by Rossi could not be construed against any of the other defendants except himself, nor can the statement itself be construed, as establishing conspiracy

(Testimony of W. M. Whitney.)

as against the other parties, but only bind Mr. Rossi, and if a statement was made in furtherance of the conspiracy, and the conspiracy is established, then it may be construed as against all the parties.

WITNESS.—(Continued.) Mr. Rossi also stated that in 1925, a few days before the raid he was working under the direction of the Gatts and Frank Gatt in particular and was collecting from other bootlegging establishments which Frank Gatt and John Gatt operated out of the Monte Carlo and was furnishing liquor and collecting thousands of dollars a month, as high as twelve thousand dollars a month, and turned it over to Frank Gatt as protection and graft money from these institutions and brought it up to the office and turned it over to Frank Gatt in the office of the Monte Carlo.

Mr. DORE.—I move that testimony be stricken and the jury instructed to disregard it as incompetent, irrelevant and immaterial.

The COURT.—With relation to the collection of the graft money, that may be stricken. Proceed.

Mr. DORE.—Note an exception.

The COURT.—Note it.

The witness resuming stated that in 1925 and before the raid in 1925, Rossi explained that he and the Gatts and Charles Romeo had talked it over several times to know what to do because they had executed a bill of sale to a fellow named Tony Saraci; that there was no Tony Saraci and that they got that name in the bill of sale and that they were in a hell of a fix, to use Rossi's expression, and

(Testimony of W. M. Whitney.)

didn't know how to get title out of that name because everybody was afraid to come up and sign a paper that his name was Tony Saraci and that that was the situation the last time witness talked with Rossi.

On the night of the raid I had a conversation with Frank Gatt. Knowing these things that I have stated I questioned [66] Gatt regarding his ownership, and he stated to me that he had sold this to Charley Romeo and Romeo Tronea on December 19th, 1924, and that he was not the owner. I then said, "Well, did you own it all the time for several years past up to the time you claim you sold it out?" "Yes," he said. I said, "Did you own this place in March,—this Monte Carlo in March, 1924, or 1923," he said he did; and I asked him if he received all the *proofs*, took in all the money and was responsible for the bills and paid the bills, and got the money that was in the cash-register up to the time he sold it, which was in January, 1924, he said that he did. I asked him if Lew Cicei was working for him in December, 1924, before he sold out, and he said yes, Cicei was working for him, one of his employees, had worked on the floor, as he expressed it. Then I asked him if he had employed,—if Jim Rossi had worked for him up to the time that he sold the place out, and Gatt stated that Rossi was one of his employees, was a bartender there behind the bar, and had worked for him during these times. I asked him if the morning man Bianchi had been an employee of his, and he said, "Yes,"

(Testimony of W. M. Whitney.)

that he employed all the men that worked in the Monte Carlo, he owned it and had rented the barber-shop and the lunch-counter up to that time that he had sold the place,—claimed to have sold the place. Then I had some conversation with him when we were doing the searching.

I said, "Gatt, we would take that bar apart," and he said, "I wish you wouldn't do that; what is the use of doing that; I am a good fellow, and you are a good fellow, no use of doing that"; I said, "What interest have you got in this; if you don't own the bar what do you care whether I take that bar apart, or whether I don't?" He said, "It cost me a lot of money to get another bar. [67] It is a good bar, I wish you would not do that; you have got the stuff what is the use of doing anything further." And during the process of taking that apart he asked me two or three times, spoke to me two or three times about it; and I suggested I guess I would have to look behind the mirror, he said, "Don't do that." No one else there raised any objection, neither Pepe nor Charley Romeo nor anyone else made any remonstrance at all; each of them said it was not theirs' they didn't care what we did.

Gatt opened the cash-register, pulled the drawer out underneath the cash-register and took a pouch or sack, and counted the money carefully and stacked it up and counted it and put some of this money, I don't know whether he put it all in one

(Testimony of W. M. Whitney.)

of the sacks, I saw him take it, make a memorandum and put in the safe and lock the safe.

He put it in the small office safe.

Exhibit 32 is one of the six gallons of moonshine in gallon jugs that was taken from the cache in room 17 in the St. Paul Rooms, on February 28, 1926.

Exhibit 20 is a bottle of whiskey I saw Mr. Kline have that was taken at the Monte Carlo when Cicci was arrested on Dec. 26, 1923.

Exhibit 8 is one of the ten quarts in bottles like this that were found in the cache in room 17 on the 28th day of February, 1925.

Exhibit 1, nine quarts of brandy in room 17 on the 28th day of Feb., 1925.

Exhibit 5, there were twenty-one quarts of Black and White in two cases taken from room 17 on the 28th of Feb., 1926.

Exhibit 19 is a quart of white moonshine that was poured from one of the three five-gallon kegs that was in the cache in room 17 on the 28th of February, 1925.

Exhibit 3 is one of the eight or nine quarts, I have forgotten which without referring to my notes, of John Dewar's Special liquor [68] found in the cache in room 17 on this February 28th, 1925, the night of the raid.

Exhibit 17 is one of the twenty-one quarts of Perfection Scotch whiskey found in room 17 in the cache.

(Testimony of W. M. Whitney.)

Exhibit 2 is one of two quarts of John Dewar's found in the cache in room 17.

Exhibit 9 is, I believe, one of the two bottles of creme de menthe that was found in the cache; this is a cordial liquor; it contains more than one-half of one per cent and fit for beverage purposes.

Exhibit 6 is one of a half case of gin that was found in room 17 on February 28th, 1925.

Exhibit 18 is one of twelve pints of colored moonshine found in room 17, February 28th, 1925.

Exhibit 13 is one of eighteen pints of white distilled spirits or moonshine found in room 17, in the cache, on February 28th, 1925.

Exhibit 14 is one of eighteen half pints of colored moonshine found in the cache to room 17 on February 28th, 1925; that is one of them.

Exhibit 30, is the same as above.

Exhibit 21 is one of the full pints of white moonshine taken from same room and cache.

Exhibit 24 is one of the half pints of white moonshine taken from room 17 on February 28, 1925.

Exhibit 12, taken from cache in room 17, half pint of white moonshine.

Exhibit 22 one of the pints of white moonshine; same answer applies as to Exhibit No. 21. [69]

Exhibit No. 4 is a bottle of Black and White that I saw standing by or on the tray in the office when I first went into the Monte Carlo, when Mr. Hesketh and the others were there.

Exhibit No. 15 is a bottle that was standing by the tray on the counter on the evening of the 28th

(Testimony of W. M. Whitney.)

of February, 1925, at the Monte Carlo when Mr. Corwin called me down; at that time it was full of whiskey, and was not broken, and I saw it and identified it at the last trial, when it was admitted in evidence.

Exhibit No. 25 is a bottle that was turned to me by Agents McCrory and Lambert on or about May 29th, 1924, and held by me for a short time and then turned over to Agent Kline, the custodian.

Exhibit No. 23 is the same as above, it was about May 26th that I received it, 1924, and I had it a short time, and turned it to Mr. Kline.

Exhibit No. 27 is the bottle I purchased on the 25th of November, 1923, for \$3.00; I kept it in my locker until in the summer of 1924, I believe, and I turned it over to Mr. Kline with some of the others.

Exhibit No. 29 is a bottle that was brought to me by McCrory and Carruthers about January 8th; they marked it in my presence, and I kept it for some time and turned it to Agent Kline.

Exhibit No. 11 is the liquor that was poured out of the glasses—remaining in the glasses at the time of the raid at the Monte Carlo.

These exhibits here they were brought up: Mr. Kline was down at the time of the raid himself and helped gather them, and I helped him gather them, and he took charge of them, brought them up to the vault,—bring them first to the Prohibition Office and there we marked them; I marked most of the labels myself,—Mr. Corwin and I in Mr. Kline's

(Testimony of W. M. Whitney.)

presence, and he took charge of [70] them, and kept them in the vault until the last trial, until they were introduced in evidence, they have been in the possession of the prohibition office; since then they have been in the possession of these court officers.

(Trs. 101, line 4 to Trs. 107, line 4.)

Rec'd copy, Oct. 8, 1926.

JOHN F. DORE,
Atty. for Defts. [71]

Cross-examination.

I had a conversation with Rossi in September, 1924. This conversation took place at Sixth or Seventh Avenue and Jackson Street. He went out driving with me in my automobile. He was not under arrest, he was simply riding with me in my automobile. I met him by prearrangement, for the purpose of having a conversation with him. I talked with him in December over the telephone. He told me then over the telephone that he collected police graft and sheriff's graft. He told me that Frank Gatt was the king of the grafters and was getting rich; that he didn't like it and that lots of the Italians didn't like it, and for that reason he told me the story. He told me he was telling me the story because he wanted to help me catch Frank Gatt. He told me he was collecting for Gatt about \$12,000 a month. He said Gatt was paying him \$110 a month for this collection. He arranged to call me up on the telephone and tell me what was going on. He called me before this raid.

TESTIMONY OF T. P. RAGSDALE, FOR THE
GOVERNMENT.

T. P. RAGSDALE, a witness produced on behalf of the Government, being duly sworn, testified as follows:

I bought two drinks of moonshine from Jimmie Rossi at the Monte Carlo, on May 12, 1924, and the same amount from Rossi on May 14, 1924.

Government's Exhibit 46 received in evidence.

Government's Exhibits 1 to 35 admitted in evidence.

Government rests. [72]

TESTIMONY OF ROMEO TRONCA, FOR THE
DEFENDANTS.

ROMEO TRONCA, one of the defendants, being duly sworn, testified as follows:

Direct Examination.

I acquired an interest in the Monte Carlo on January 19, 1924, from Frank Gatt. I paid \$3,000 for a half interest in the place. Romeo was my partner. We couldn't get a license, so Rossi gave *is* \$2,000 for a third interest, saying he could get a license, but he couldn't get a license. Then I sold the place for \$1,500 and lost \$500 on the deal. That was April 5th. I never was in the business with Frank Gatt or John Gatt, or anybody else. I left Seattle July 10th in the morning, to go to Spirit Lake, where I have an interest in a mine. July

(Testimony of Romeo Tronca.)

11th, when the agents say I was at the Monte Carlo, I was at Spirit Lake, with Mr. Horton and Mr. Jahn. I was there *u*; until after the 15th of July. On the morning of September 22, 1924, I left Spirit Lake and got back to Seattle on the night of September 23d, after dark.

Cross-examination.

Q. Isn't it a fact that this partnership among you men existed for the purpose of distilling moonshine?

Defendants objected on the ground that it is incompetent, irrelevant and immaterial. Objection overruled and an exception noted.

Q. And you had your headquarters at the Monte Carlo?

Same objection, same grounds.

A. Not me.

TESTIMONY OF W. K. GRISSON, FOR DEFENDANTS. [73]

W. K. GRISSON, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

I was with Romeo Tronca, at Spirit Lake, September 22, 1924.

TESTIMONY OF C. W. JAHN, FOR DEFENDANTS.

C. W. JAHN, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

I was with Romeo Tronca, at Spirit Lake, July 11, 1924. I was with him from July 8th. I was with him on the morning of September 22d, at Spirit Lake, until the night of the 23d of September, when we arrived in Seattle.

TESTIMONY OF HOWARD HORTON, FOR DEFENDANTS.

HOWARD HORTON, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

I was with Romeo Tronca, at Spirit Lake, July 11, 1924, and also on September 22, 1924.

TESTIMONY OF W. M. WHITNEY, FOR DEFENDANTS (RECALLED — CROSS-EXAMINATION).

W. M. WHITNEY, a witness recalled by the defendants, testified as follows:

Cross-examination.

As I explained this morning, I had talked with James Rossi and he had told me about this situa-

(Testimony of W. M. Whitney.)

tion, and he suggested himself that I,—any charge I filed I include his name in it, and this was filed with his knowledge, he was to be charged, so that Gatt would not suspect he had talked to me. [74]

TESTIMONY OF CHARLES ROMEO, FOR DEFENDANTS.

CHARLES ROMEO, one of the defendants, being duly sworn, testified as follows:

Direct Examination.

Admitted that he had owned the Monte Carlo at one time, but not with Frank or with John Gatt. Denied he had ever sold any liquor there or knew that any was kept there, or that he had ever engaged in any of the acts or things charged in the indictment.

TESTIMONY OF FRANK GATT, FOR DEFENDANTS.

FRANK GATT, one of the defendants, being duly sworn, testified as follows:

Direct Examination.

I owned the Monte Carlo until January, 1924, when I sold it to Rossi and Tronca. I have had no interest in it since. At the time I owned it I was the sole owner. Pepe never was at my house and never had the conversation he testified to. No liquor was ever sold at the Monte Carlo or kept there with my knowledge.

(Testimony of Frank Gatt.)

Cross-examination.

Q. You were convicted—you and Ciccì were convicted of the possession of intoxicating liquor out of that place in 1923?

Defendants object on the ground that it is incompetent, irrelevant and immaterial. Objection sustained and the jury instructed to disregard it.

TESTIMONY OF MRS. FRANK GATT, FOR DEFENDANTS.

Mrs. FRANK GATT, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination. [75]

(By Mr. DORE.)

Q. What is your name? A. Mrs. Frank Gatt.

Q. What relation are you to the defendant, Frank Gatt? A. His wife.

Q. I will ask you, Mrs. Gatt, where you live; where the family home is?

Mr. McKINNEY.—We object to any testimony from this woman on the ground that she is the wife of the defendant.

The COURT.—If an objection is made on that ground the objection is sustained.

Mr. DORE.—Note an exception. Does your Honor hold she won't be allowed to testify at all?

Mr. McKINNEY.—Not on behalf of her husband.

The COURT.—You say you offer her in behalf of the other defendants?

Mr. DORE.—I am offering her as a witness.

The COURT.—She can testify in behalf of any of the other defendants; if you offer her as a witness for any of the other defendants, except her husband, she will be permitted to testify; but she cannot testify in behalf of her husband over the objection of the Government.

Mr. DORE.—Note an exception; that is all, Mrs. Gatt. [76]

Defendants rest.

During the opening argument by C. T. McKinney, Assistant United States Attorney, the following occurred:

Mr. McKINNEY.— * * * “I will say to this jury if you want to rid this city of one of its most corrupt influences, and you find that the evidence so warrants in this case, you will have done the city one of the best services in years.”

Mr. DORE.—I ask the jury be instructed to disregard that as improper argument.

The COURT.—The jury will disregard the conclusion.

During the closing argument by T. P. Revelle, United States Attorney, the following occurred:

Mr. REVELLE.—“When you find a crowd of men like these men in your city, some of them not naturalized, according to the testimony, when you find them together,—

Mr. DORE.—I object to that as improper argument, and ask the jury to be instructed to disregard it.

The COURT.—The jury will conclude upon the evidence, not conjecture. [77]

Mr. REVELLE.— * * * “These defendants are charged with conspiracy, they have taken the stand in their own behalf, three of them, and we tried to examine them on certain things connected with that place; we tried to show you that this place was raided and Frank Gatt came and pleaded guilty, and the Court would not let us do it,—

Mr. DORE.—I object to that as improper argument, and ask the jury be instructed to disregard it; absolutely improper.

The COURT.—You will conclude upon the evidence.

Mr. DORE.—I am asking for a definite instruction on that remark.

The COURT.—And the remark is withdrawn by counsel and the jury will disregard it.

Mr. REVELLE.— * * * “We tried to bring out all the other facts so that you might have the whole story; Mr. Dore objected I suppose feeling he was protecting the rights of his clients,—

Mr. DORE.—I object to that as improper argument to the jury, and ask they be instructed to disregard that statement.

The COURT.—The jury will disregard that statement.

Mr. REVELLE.—Let us see if I will have to take this back,—

Mr. DORE.—I object to that remark of counsel and ask the jury be instructed to disregard the remark.

The COURT.—Yes, proceed.

Mr. REVELLE.—Gentlemen, it is getting so I am afraid I will not be able to talk at all. Each one took the stand and they were supposed to tell you the whole truth,—

Mr. DORE.—I object to that as an improper remark, and ask the jury to disregard it.

The COURT.—Overruled. [78]

INSTRUCTIONS OF COURT TO THE JURY.

The COURT.—Gentlemen of the Jury: The indictment is in one count; it charges the defendants with conspiracy entered into on or about the 1st day of March, 1923, and continuing to the time of the filing of the indictment, which was on the 26th day of March, 1925, to violate the National Prohibition Act; that is to knowingly possess and sell intoxicating liquor containing the prohibited alcoholic content, as provided by the Volstead Act, at 404 Fifth Avenue South in the city of Seattle. And likewise to maintain a common nuisance at that place by keeping for sale in that place the property which I have mentioned to you, intoxicating liquors. The liquors that they conspired to possess and sell it is charged were whiskey, distilled spirits and other liquors, and then charges the commission of certain overt acts by the defendants to carry forward the conspiracy. All the acts are set out in the indictment, what they are and when they are done and by whom. The indictment

will be sent to the jury-room; it is not evidence, it is merely the paper charge; the only function of the indictment is to bring the defendants before the Court to answer the charge, and while it is sent out for your information as to what the charge is, it is not evidence, and not to be considered by you as evidence.

You are instructed that it is against the law for persons to conspire or agree together to violate a law of the United States, and then for one of the parties to do some act to carry forward that conspiracy. A conspiracy may be defined as a combination of two or more persons by concerted action to accomplish an agreement or unlawful purpose; the act [79] itself is the essence of the charge; and while the combination of two or more persons must be shown, this need not be done by testimony showing that two or more persons met together and entered into a formal arrangement, either oral or in writing, for the unlawful purpose, or by stating the general extent and detail of the plan, or means by which it is to be made effective; it is sufficient if two or more persons in any manner positively or tacitly come to a mutual understanding to accomplish an unlawful purpose. Where an unlawful object is sought to be effected and two or more persons actuated by a common purpose to accomplish that object work together in any way in furtherance of the unlawful scheme, designedly, every one of such persons becomes a party to the conspiracy, although the part he is to take may be a subordinate one; nor is it mate-

rial how the profits or the money is to be divided that is to be made out of the conspiracy, if any, or whether any profits are to be made; a conspiracy might be formed to violate a law of the United States without any profit whatever. One person may make all the profits, so far as that is concerned, and the others would be just as liable to the charge if they actually knowingly entered into an unlawful enterprise; and anyone who after a conspiracy is formed, and who knows of its existence consciously joins therein becomes as much a party thereto from that time as though he had originally conspired. And, furthermore, where several parties have conspired together for the same illegal purpose, any act done by one of the parties in pursuance of the original concerned plan with reference to the common object, and in furtherance thereof, is, in the contemplation of law, the act of the parties, and proof of such acts against one of the [80] parties who engage in the same conspiracy.

In this case one of the defendants, Zrinello Pepe, pleaded guilty. You are not concerned with his guilt in this case except as it may bear upon the relation with either one of the other defendants. Merely because he pleaded guilty would not carry any presumption to your minds that the other defendants, or any of them, are guilty because they are charged in the same indictment; and the defendants are entitled to have their relation to the charge determined upon the evidence which is presented against each of them in this case.

When a conspiracy is established then any statement made by one of the defendants to the conspiracy during the pendency of the unlawful enterprise, in furtherance of the conspiracy, is not only evidence against himself, but is evidence against the other defendants, but when the combination is proved they are as much *responsibility* for such declaration and the acts and objects to which they relate as if made or committed by themselves. A statement by one party, however, may not be considered as proof in establishing conspiracy, unless the statement was made in the presence of such other parties to the conspiracy, nor considered against a party to the conspiracy out of whose presence it was made. Such a statement would only be a statement against the party himself, but after the conspiracy is established as having been formed, to your satisfaction beyond a reasonable doubt, then a statement made during the pendency of the conspiracy, and in furtherance thereof, may be considered against every other person who consciously joins the conspiracy. If you are convinced by the evidence in this case beyond a reasonable doubt that any or all of the defendants did enter the conspiracy [81] as charged in this indictment, or thereafter the conspiracy was formed others of the defendants joined knowingly and consciously, as herein stated, then a statement made by one of the defendants to the conspiracy after the conspiracy is established by a degree of proof which I have indicated to your minds made by either of the defendants in furtherance thereof,

then it could be considered as against all of the parties to the same conspiracy as it existed at the time that the statement was made. A mere recitation of the acts done by one defendant with relation to the other acts, and which statement was not made in furtherance of the conspiracy, could only be considered as evidence against the party making it.

Each of the defendants in this case, except Pepe, who has pleaded guilty, has entered a plea of not guilty; that means they deny the charges; they are presumed innocent until they are proven guilty beyond every reasonable doubt. And this presumption continues with them throughout the trial and until you are convinced by the evidence that they are guilty by that degree of proof. In determining whether they are guilty of the conspiracy as charged, you will take into consideration all the evidence that has been presented, duly weigh it, duly consider it, analyze it and determine whether it establishes the guilt of the crime charged; and if you believe from the testimony that a conspiracy was formed by one or more of the defendants, or by one of the defendants, and the others disclosed by the evidence, and that consummation of the overt acts was done by one of the conspirators charged during the pendency of the unlawful enterprise, in furtherance thereof, then you will find such defendant whom you find to have conspired or after the formation of such conspiracy knowingly joined, guilty as charged. If you have a reasonable doubt as to any one of the defendants you

will return a verdict of not guilty against such defendant.

Evidence is of two kinds, direct or positive, and circumstantial. Direct and positive testimony is produced by a witness testifying directly of his own knowledge of the [82] facts to be proven; and circumstantial evidence is proof of facts and circumstances in a case from which a juror may infer other and connected facts which usually and reasonably follow, according to the common experience of mankind. Circumstantial evidence is legal and competent in a criminal case when it is of such a character as to exclude every reasonable hypothesis other than the defendants are guilty, and when it is of that character it is entitled to the same weight as direct evidence. Circumstantial evidence in any case should be considered by you in connection with the other evidence before you, but the circumstances must be consistent with each other, consistent with the guilt of the parties charged, inconsistent with their innocence, and inconsistent with every other reasonable hypothesis except that of guilt.

You are instructed, however, that the mere presence of any one of the defendants at the premises known as 404 Fifth Avenue South, the place named in the indictment, in Seattle, would not of itself make them guilty of conspiracy, nor would the fact that title to the property was standing in any particular party's name, make the party guilty of conspiracy, nor would the fact that a person sold intoxicating liquor, or had the possession of intoxi-

cating liquor, that fact alone would not establish conspiracy; that would be a violation of the National Prohibition Act, but it would not of itself establish conspiracy; but while the act of possession and sale would be a violation of law, it would not of itself, as stated, be conspiracy; and if you find possession was had and sale was made by one of the parties, the act of possession and sale should be considered by you with other acts disclosed by the evidence tending to show an understanding, a co-operation or an arrangement, if any, to carry forward the unlawful enterprise as charged in the indictment, of possessing or selling distilled spirits or having distilled spirits at the place named in the indictment for the purpose [83] of sale.

The gist of this action, as I have stated, is conspiracy to sell liquor as set out in the indictment, at 404 Fifth Avenue South, Seattle. Much has been said during the trial of this case as to ownership of the liquor and the bar in the soft-drink place, and other paraphernalia used in this bar. The ownership of the property is not decisive of this issue. Some of the defendants, or all, may be guilty of the conspiracy charged and not have any property interest in any of the fixtures, or in the leasehold. The ownership of property, the status of the title, is an element to be taken into consideration as to whether the conspiracy was formed, if a conspiracy was formed, and who participated therein.

Much likewise has been said with relation to the witness Pepe, who pleaded guilty, and testified to

the fact that he was employed in this place by the defendant Frank Gatt as a bottleman, and then as a bartender; that he made sales of intoxicating liquor as bartender. As a bottleman he would carry the bottle to the one acting as bartender to make sales,—deliver the bottle until the customer was served, and then take it back and put it in his pocket until again demanded; and testified to you where the liquor was stored; that he carried the only key to the room; also testified that Gatt delivered to him a certain bill of sale who he said told Pepe that his name was now Tony Seracca; that Gatt told him that that was now his name, and stated that he at no time had any interest in the property, never had any money to buy the same, and never did buy it.

Criticism has also been made in the argument with relation to the testimony of Whitney in relating before you [84] conversations had with the defendant Rossi. You are instructed that where a party pleads guilty or admits the acts charged, you will take into consideration his testimony with relation to all the defendants to him, and every fact and element which has been disclosed here,—every circumstance which shows interest in the conduct and verity of his story. One of the things for you to determine is, did the defendant Frank Gatt,—and I am referring to him because his name was more frequently mentioned in argument and likewise at the trial,—use these other defendants as agencies through which the sale of intoxicating liquor could be directed? Was the transfer of the

title to the several owners in good faith? If the transfer was in good faith did Frank Gatt and some of the other defendants, and persons disclosed by the evidence, form a conspiracy during the time that Frank Gatt owned the property confessedly, and did the conspiracy continue throughout until the time of the raid disclosed by the testimony, in February, 1925. In determining whether he did, or not, you will take into consideration his business, his relation to this place, his activities about the place, the relation he bore to the other parties who were in the place, and all and every element which you feel bears upon the fact as to whether he did have anything to do with it, whether he was the active agent. If you believe beyond a reasonable doubt that he was, and that he is the man who was operating behind these other defendants, or some of them, or with other parties disclosed by the evidence, then he would be guilty whether the title to the property stood in his name, or not.

Is any credence to be placed in the testimony of Pepe, or the statements made by Rossi to Whitney, as disclosed by Mr. Whitney. Pepe says that a conspiracy was formed. Whitney said what Rossi told him with relation to the activities of the defendant Frank Gatt. From the statements of both of these parties they were parties to the conspiracy. Pepe said what Gatt did, that he acted under the direction and supervision of Gatt; that the holding of the bill of sale which was executed in January, 1925, was without his knowledge, [85] he

knew nothing about it,—it was given to him by Frank Gatt and that Gatt told him what his name was to be henceforth; and you heard his testimony with relation to statements made to him by Frank Gatt with relation to the conduct of the parties. Now, you are instructed that Pepe's testimony, likewise the statement of Mr. Rossi under the law are denominated accomplices, and the testimony of an accomplice is from a polluted source. Now, the testimony of an accomplice should be received with care and caution and subjected to careful scrutiny in the light of all of the other evidence in the case; and the jury ought not to convict upon the testimony of an accomplice alone unless after a careful examination of such testimony the jurors are satisfied beyond a reasonable doubt of its truth and that they can safely rely upon it.

In this case there is other testimony tending to show acts of certain of the parties covering the times charged in the indictment, and these acts of the several defendants should be considered in the light of all the testimony presented, and the testimony of the accomplice given the weight you feel it is entitled to in the light of all the other evidence and testimony which has been produced before you; and if you find from the evidence in this case that any witness has wilfully testified falsely concerning any material fact in the case you will have the right to disregard the testimony of such witness entirely, except in so far as it may be corroborated by other credible evidence or circumstances detailed and developed upon the trial of the case.

The defendant Bianchi did not take the stand and testify, that was his right, and because he did not take the stand and testify you should not infer from that fact that he is guilty of the crime charged, but should find from the evidence that has been presented here whether he is guilty, not from the fact he did not take the stand. [86]

The defendant Tronca has presented testimony tending to show that he was out of the city of Seattle, during a part of July,—I think the forepart of July,—July 10th or along there; you will remember the testimony, and was likewise out a short period of time prior to and including the 22d day of September; those are the dates upon which testimony has been presented he was present at this place at 404 Fifth Avenue South, in question. Now, of course, he could not be at both places at once. He testified he returned to the city of Seattle on the 22d of September about 7:15 or just after twilight; and you heard the testimony of the witnesses on the part of the Government at the time,—giving the time when they said they were in there and saw him there. You will determine, therefore, from the evidence what the fact is, if he was out of the city, then the witnesses on the part of the Government are mistaken as to the time when he was there, and there is no other testimony with relation to the particular time. They have fixed the time specifically, so you will have to determine whether he was in the city, or out of the city on that date. If you find from the evidence that it is material that would be material only as a circum-

stance to show whether he was in the conspiracy. If you believe from all the evidence presented that he had joined the conspiracy at that time, you are instructed that his presence or absence on the 22d day of September, or in July, would not be material, if you find a conspiracy was formed, and one of the acts charged in the indictment was done by one of the parties defendant in furtherance of the conspiracy. If he has shown,—if the testimony that he was out of the city raises in your mind a reasonable doubt as to whether he was a member of the conspiracy, if you find that a conspiracy was formed, then the doubt should be resolved in his favor. [87]

Something was said in argument with relation to certain expressions given current by the Chief Justice of the Supreme Court of the United States of a convention of Circuit Judges, of which he was the chairman, of a suggestion to the Department of Justice that in conspiracy cases, or in National Prohibition cases, that they thought it advisable that conspiracy charges be not lodged against violators of the law unless the offense rises to the dignity contemplated within the conspiracy statute. Now, that suggestion was merely advisory; it is not the law. The Congress fixes the law. The conspiracy statute was not amended by the Congress, and the National Prohibition Act comes within the purview and meaning of the conspiracy law as much as any other law, and the Department of Justice,—when I refer to the Department of Justice I refer to the Attorney General of the United States Dis-

trict attorneys in the several districts,—they are the persons to present the matters to the grand jury, and when a grand jury feels that testimony is presented that rises to the dignity of a charge under the conspiracy statute, then courts and juries,—when I say “courts” I mean *nisi prius* court,—may not wave aside laws and say that they should not be enforced. When a conspiracy charge is made and indictment returned by the grand jury then this court and jury,—and the jury is a part of the court,—must give the charge serious consideration, aside from the suggestion of the convention of Judges, and we cannot be controlled by that. We are simply controlled by the law. And so in this case, the charges here is that a conspiracy was entered into to sell, possess and to maintain a nuisance contrary to this law. Now, when there is testimony that a nuisance is in contemplation, that is one of the elements for your consideration, whether that was comprehended within the conspiracy, if a conspiracy is established. [88]

You, Gentlemen of the Jury, are the sole judges of the facts, and you must determine what the facts are from the evidence which has been presented. You are likewise the sole judges of the credibility of the witnesses who have testified before you. If I have referred to any fact in the case, or given you any impression or opinion as to what I believe the facts are in this case I want you to disregard it, because that is your function, and not mine. If I have conveyed any such impression to you it has simply been done for the purpose of explaining the

law that has application to the facts. Now in determining the weight or the credit you desire to attach to the testimony of a witness you will take into consideration the reasonableness of the story, the opportunity of the witness for knowing the things about which they have testified, the interest of lack of interest in the result of this trial, and from all of the circumstances and the testimony determine in this case where the truth lies.

The Government has presented prohibition agents, whose duty it is to ferret out places in which they believe the law is being violated, and their duty then is to present it to the Court; they are paid a compensation,—regular compensation, not predicated upon convictions; they get paid whether there is any conviction or not; but their duty is to state to the Court just what they found, tell you what they saw and heard; that is what they do. Did their story sound reasonable? Are the facts which they relate here corroborated by admitted facts or other circumstances here such as to carry conviction to your minds that they have told you the truth; if it is not then you must lay it aside, merely because they are agents for the Government you must weigh their evidence by the same rule as you would the testimony of any other witness. Did they appear in their testimony as though they were falsely testifying for the purpose of fastening a crime upon innocent men, because if they swore falsely they knew these defendants were innocent,—if they knowingly swore falsely. Now then, is there any indication that they wilfully perjured themselves or

were honestly mistaken with relation to any fact disclosed. Now the defendants of course are interested, because if they are convicted they must be punished. [89] Now, does their story,—the story of the defendants sound reasonable. Did they in this case present such a relation of conditions and circumstances before you, irrespective of the truth, for the purpose of raising a reasonable doubt in your minds in this case? Did their testimony ring true? What was the defendant Gatt doing in this place after he says he transferred it to Pepe? Was his explanation convincing, sufficient to raise a reasonable doubt? What was he doing in this room with the other witnesses who testified to-day, and who the witnesses on the part of the Government swore they saw at the table seated around, persons whom they named, and glasses and a bottle of whiskey? What was he doing there, and how did he come there; what was the purpose? It is admitted, I believe, at least by one of the witnesses for the Government, that they believed they had these glasses there, but did not see any bottle, except one of the witnesses said he did see a bottle but it was wrapped up in tissue paper, and he was asked to sign or initial the bottle by one of the agents, and he declined to do it; you heard him say that, and he asked the witness to sign his name in a book, which the witness did, Mr. Corwin. Now, how do these stories and this testimony impress you? Was the relation of Frank Gatt with the other defendants in this place by reason of the friendship and intimacy which has been disclosed here, and all of the

established facts as you believe them to be, established or conceded, corroborative of Pepe's testimony? Did Pepe impress you as a man who told the truth; was he fair and frank; did he impress you as a man who had invested that amount of money in this place, or who had received the amount of money that some documents show he did receive, and he stated that he signed those papers at the request of some of the other defendants, I believe Mr. Gatt, but you will take his testimony. Did it impress you he was telling the truth, if it did then give it the consideration it is entitled to. If his testimony is strengthened by the other established facts and circumstances, give it consideration. Did the exhibits that were taken from the person of Mr. Frank [90] Gatt, did they show any corroboration of the witness Pepe's testimony as disclosed upon the witness-stand, or the testimony of Mr. Whitney as given here. Try this case fairly; give the defendants a square deal; they are entitled to it; the Government is entitled to a square deal; the Government does not want *this men* convicted unless you are convinced beyond a reasonable doubt that they are guilty, and if you are convinced beyond a reasonable doubt that they are guilty then it will be your duty to return a verdict of guilty against such defendants as you believe to be guilty beyond a reasonable doubt. This is a Government of law and not of men; the law is made by the Congress; neither you nor I have anything to do with the policy of the law; we are simply here, you to find the fact and I as Presiding Judge

to tell you what the law is, and then if the parties are found guilty to fix the penalty between the maximum and the minimum; with the penalty you have nothing to do. If courts do not function properly, and you do not find the facts as shown beyond a reasonable doubt, or apply the law as the Congress provides, you encourage law violators, and it would only be a short time until a condition of anarchy would obtain in this country, and property, life and liberty would ultimately be destroyed. Try this case fairly without any prejudice, and give the defendants a square deal, as I stated a moment ago, and the Government a square deal; if you have a reasonable doubt resolve it in favor of the defendants.

A reasonable doubt is just such a doubt as the term implies, a doubt for which you can give a reason; it must not arise from a merciful indisposition or a kindly or sympathetic feeling, or a desire to avoid performing a possible disagreeable duty. It must be a substantial doubt such as an honest, sensible, fair-minded person with reason might entertain consistently with a conscientious desire to ascertain the truth and to perform a duty. A juror is satisfied beyond a reasonable doubt if from a fair and candid consideration of the entire evidence he has an abiding conviction of the truth of the charge. It is such a doubt as a man of ordinary prudence, sensibility and decision in determining an issue of [91] like concern to himself as that before the jury to the defendant would make him pause or hesitate in arriving at his conclusion, a

doubt which is created by the want of evidence, or may be by the evidence itself; a juror is satisfied beyond a reasonable doubt when he is convinced to a moral certainty of the guilt of the party charged.

You will take into consideration all the exhibits which have been presented. I will not send the liquor out, because there is no dispute about that; I will send out all the other exhibits. You will take all of the exhibits into consideration together with all the other testimony which has been presented. I will ask the attorneys to check up on the exhibits which have been offered and admitted by the Court so that there may be no question as to their identity.

I think I want to say something else, I mentioned that upon the trial of the other case. Reference was made to it in argument likewise upon both sides in the testimony. This bill of sale that was marked executed on January 8th, 1925, signed by Charles Romeo to Tony Saracca, bears on the back an endorsement "Filed for record at the request of Theresa DeCaro, 1340 Rainier Avenue," number something there, that is blurred. In view of the testimony here Theresa DeCaro could give the Court and jury some information as to who requested the filing of this. Pepe said he knew nothing about it until afterwards. I *call* attention to this at the other trial, and you are not concerned with the other trial, so both sides knew and at that time some suggestion was made, that one of the defendants did not know about this endorsement upon the bill of sale; I asked the Clerk after the case was closed to hand me the record and no subpoena had been is-

sued for this party. Now, this party could have given us some information, and given you some information as to who had recorded this. If it was Pepe and she had it recorded on his behalf, she could have told that and that would have settled the proposition. Irrespective of Pepe's testimony her connection with that likewise could have carried convincing proof. Now, it is a rule of law [92] that when any person knows anything of a fact with relation to an issue before the Court, and such party is not produced by the party who should produce the witness, then the Court and the jury may assume that the witness who was not called, if he could be called, would testify more strongly against the party whose duty it was to call him. Now in this case it is not for me to say upon whom the duty rested in this case, and I simply mention that to you as a rule of law, in view of the endorsement upon this exhibit, which is before you, and the fact that no subpoena has been issued of which the Court takes judicial notice.

It will require your entire number to agree upon a verdict, and when you have agreed you will cause it to be signed by your foreman, whom you will elect immediately upon retiring to the jury-room. The verdict is in the usual form, before the word "guilty" is a blank, you will write in there "is" or "not" with relation to each defendant just as you may conclude upon, and then cause it to be signed by your foreman, whom you will elect immediately upon retiring to the jury-room. And in this connection I want to say, that since you have been kept

together since the beginning of this trial I carried it over to this time so that you may be given this without any more inconvenience to you than necessary, and if you agree upon a verdict before midnight it is agreed by the defendants and the Government that a sealed verdict may be brought in; that is, when you have concluded upon your verdict have it signed by your foreman, and the foreman then will fold it up and put it in an envelope and seal it up, and you may all come here at ten o'clock to-morrow morning. If you don't agree by twelve o'clock I will have the marshal or the bailiffs put you to bed, and you can sleep until morning, if you so desire, and you will get your sleep until,—I get up at six o'clock, you ought to get up at six o'clock, go out and get your breakfast and bring you back to the jury-room. [93]

Are there any exceptions?

Mr. DORE.—Note an exception to the last instruction which contained a reference to the DeCaro woman, on the ground it is irregular in law, and inappropriate to this case.

Also want an exception noted to the instruction in which you said if the jury believed the testimony of Rossi as related by Whitney beyond a reasonable doubt they could base a verdict of guilty upon it.

The COURT.—No, I didn't say that. I don't think you can convict in this case upon Rossi's statement alone; I would not submit a case upon Rossi's statement alone, but you can consider his statement as disclosed by Mr. Whitney with all the

other statements in the case; you cannot convict upon Rossi's statement alone.

Mr. DORE.—Note an exception.

The COURT.—I will withdraw the last instruction I gave you with relation to the endorsement upon the bill of sale since exception was taken, you will disregard what I said about it. [94]

And now, in furtherance of justice, and that right may be done, the said defendants tender and present to the court the foregoing as their bill of exceptions in the above-entitled cause, and pray that the same may be settled and allowed and signed and sealed by the Court and made a part of the record in said cause.

Attorney for Defendants Charles Romeo, August Bianchi, John Gatt and Frank Gatt.

HERMAN S. FRYE,
Attorney for Defendant Romeo Tronca.

[Endorsed]: Lodged Apr. 14, 1926. [95]

[Title of Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS.

The defendants in the above-entitled cause having tendered and presented the foregoing as their bill of exceptions in said cause to the action of the Court, and in furtherance of justice and that right may be done him, and having prayed that the same may be settled and allowed, authenticated, signed and sealed by the Court and made a part of the

record herein; and the Court having considered said bill of exceptions and all objections and proposed amendments made thereto by the Government, and being now fully advised, does now in furtherance of justice and that right may be done the defendants, sign, seal, settle and allow said bill of exceptions as the bill of exceptions in this cause, and does order that the same be made a part of the record herein.

The Court further certifies that each and all of the exceptions taken by the defendants, as shown in said bill of exceptions, were at the time the same were taken allowed by the Court.

The Court further certifies that said bill of exceptions contains all the material matters and evidence material to each and every assignment of error made by the defendants and tendered and filed in court in this cause with said bill of exceptions.
[96]

The Court further certifies that said bill of exceptions was filed and presented to the Court within the time provided by law, as extended by the orders of the Court heretofore made herein.

Done and ordered in open court, counsel for the Government and defendant being now present, this 11 day of March, 1927.

JEREMIAH NETERER,
Judge.

[Endorsed]: Filed Mar. 11, 1927. [97]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING MAY 1, 1926, TO FILE RECORD.

For good cause shown, IT IS HEREBY ORDERED that the time for filing the record in the above-entitled cause in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same hereby is extended to and including the 1st day of May, 1926.

Done in open court, this 22 day of March, 1926.

JEREMIAH NETERER,

Judge.

General Order Book No. 12, at page 172. [98]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING AUGUST 1, 1926, TO FILE RECORD.

For good cause shown, IT IS HEREBY ORDERED that the time for filing the record of the above-entitled cause in the office of the Clerk of the Circuit Court of Appeals for the Ninth Circuit be and the same hereby is extended to and including the 1st day of August, 1926.

Done this 12 day of July, 1926.

JEREMIAH NETERER,

Judge.

O. K.—C. T. McKINNEY,

Asst. U. S. Atty.

[Endorsed]: Filed Jul. 12, 1926. [99]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING DECEMBER 10, 1926, TO FILE RECORD.

For good cause shown, IT IS HEREBY ORDERED that the time for filing the record in the above-entitled cause in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same hereby is extended to and including the 10th day of December, 1926.

Done in open court, this 1 day of Nov., 1926.

JEREMIAH NETERER,

Judge.

O. K.—C. T. McKINNEY,

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 1, 1926. [100]



[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING APRIL 1, 1927, TO FILE RECORD.

For good cause shown, IT IS HEREBY ORDERED that the time for filing the record in the above-entitled cause in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same hereby is extended to and including the 1st day of April, 1927.

Done in open court this 21 day of March, 1927.

JEREMIAH NETERER,

Judge.

O. K.—C. T. MCKINNEY,

Asst. U. S. Atty.

[Endorsed]: Filed Mar. 21, 1927. [101]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please make a transcript of record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, and include therein the following:

Indictment.

Plea.

Record of trial and empanelling jury.

Verdict.

Motion for new trial.

Judgment and sentence.

Petition for writ of error.

Assignment of error.

Order allowing writ of error and fixing amount of bond.

All orders extending time for filing bill of exceptions.

All orders extending time for filing record.

Bill of exceptions and amendments.

Writ of error.

Citation.

Defendants' praecipe.

JOHN F. DORE,
F. G. REAGAN,
HERMAN S. FRYE,
Attorneys for Defendants.

[Endorsed]: Filed Mar. 21, 1927. [102]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,

Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 102, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the costs incurred in my

office for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause amounting to \$40.10 have been paid to me by attorneys for the plaintiffs in error.

I further certify that I hereto attach and herewith transmit the original writ of error and citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 24th day of March, 1927.

[Seal]

ED. M. LAKIN,
Clerk United States District Court, Western District of Washington.

By S. E. Leitch,
Deputy. [103]

[Title of Court and Cause.]

WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America, to the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before the Honorable Jeremiah Neterer, one of you, between Frank Gatt, John Gatt, Romeo Tronca, Charles Romeo and August Bianchi, the plaintiffs in error, and the United

States of America, the defendant in error, a manifest error happened to the prejudice and great damage of the said plaintiffs in error, as by their complaint and petition herein appears, and we being willing that that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, together with this writ, so that you have the same at the said city of San Francisco within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, that [104] the record and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done in the premises.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 12th day of January, 1926, and of the Independence of the United States one hundred and fiftieth.

[Seal]

ED. M. LAKIN,

Clerk of the District Court of the United States for
the Western District of Washington, Northern
Division,

By _____.

Acceptance of service of within writ acknowledged this 12 Jan., 1926.

C. T. McKINNEY,
Attorney Ptff.

[Endorsed]: Filed Jan. 12, 1926. [105]

[Title of Court and Cause.]

CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America, to the United States of America, and to THOMAS P. REVELLE, United States Attorney for the Western District of Washington, Northern Division, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein the said Frank Gatt, John Gatt, Charles Romeo, Romeo Tronca and August Bianchi are plaintiffs in error, and the United States of America is defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 12th day of January, 1926.

JEREMIAH NETERER,
United States District Judge.

[Seal)

Attest: ED. M. LAKIN,
Clerk of the District Court of the United States
for the Western District of Washington, Northern
Division. [106]

Acceptance of service of within citation acknowledged this 12 Jan., 1926.

C. T. McKINNEY,
Attorney Ptff.

[Endorsed]: Filed Jan. 12, 1926. [107]

[Endorsed]: No. 5131. United States Circuit Court of Appeals for the Ninth Circuit. Charles Romeo, August Bianchi, John Gatt, Frank Gatt, and Romeo Tronca, Plaintiffs in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed April 25, 1927.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

